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TITLE 68

REAL AND PERSONAL PROPERTY

Part

- II. Real Property
- III. Residential Real Property

Enactment. Unless otherwise noted, the provisions of Title 68 were added July 2, 1980, P.L.286, No.82, effective in 120 days.

PART II

REAL PROPERTY

Subpart

- A. Preliminary Provisions
- B. Condominiums
- C. Cooperatives
- D. Planned Communities
- E. Uses of Property
- F. Public Lands

Enactment. Unless otherwise noted, Part II was added July 2, 1980, P.L.286, No.82, effective in 120 days.

SUBPART A

PRELIMINARY PROVISIONS

Chapter

- 21. Land Banks

Enactment. Subpart A was added October 24, 2012, P.L.1239, No.153, effective in 60 days.

CHAPTER 21

LAND BANKS

Sec.

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- 2102. Legislative findings and purpose.
- 2103. Definitions.
- 2104. Creation and existence.
- 2105. Board.
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- 2118. Expedited quiet title proceedings.
- 2119. Annual audit and report.
- 2120. Determination on procedural revision.
- 2121. Exemption from realty transfer tax.

Enactment. Chapter 21 was added October 24, 2012, P.L.1239, No.153, effective in 60 days, unless otherwise noted.

Cross References. Chapter 21 is referred to in section 32A04 of Title 8 (Boroughs and Incorporated Towns); section 141A04 of Title 11 (Cities).

§ 2101. Scope of chapter.

This chapter relates to land banks.

§ 2102. Legislative findings and purpose.

The General Assembly finds and declares that:

(1) Strong communities are important to the social and economic vitality of this Commonwealth. Whether urban, suburban or rural, many communities are struggling to cope with vacant, abandoned and tax-delinquent properties.

(2) Citizens of this Commonwealth are affected adversely by vacant, abandoned and tax-delinquent properties, including properties which have been vacated or abandoned due to mortgage foreclosure.

(3) Vacant, abandoned and tax-delinquent properties impose significant costs on neighborhoods, communities and municipalities by lowering property values, increasing fire and police protection costs, decreasing tax revenues and undermining community cohesion.

(4) There is an overriding public need to confront the problems caused by vacant, abandoned and tax-delinquent properties through the creation of new tools to enable municipalities to turn vacant, abandoned and tax-delinquent spaces into vibrant places.

(5) Land banks are one of the tools that municipalities may use to facilitate the return of vacant, abandoned and tax-delinquent properties to productive use.

(6) Land banks, if used effectively, can be a powerful tool in the fight against homelessness. Using land banks to transform vacant, abandoned or tax-delinquent properties into housing facilities for homeless individuals provides tangible benefits to municipalities, including the restoration of blighted property and the ability to provide necessary resources to one of this Commonwealth's most vulnerable populations.

(Nov. 3, 2022, P.L.1934, No.125, eff. 60 days)

2022 Amendment. Act 125 added par. (6).

§ 2103. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The board of directors of a land bank.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Financial institution." A bank, savings association, operating subsidiary of a bank or savings association, credit

union, association licensed to originate mortgage loans or an assignee of a mortgage or note originated by such an institution.

"Land bank." A public body and a body corporate and politic established under this chapter.

"Land bank jurisdiction."

(1) a county, a city, a borough, a township and an incorporated town with a population of more than 10,000; or

(2) two or more municipalities with populations less than 10,000 that enter into an intergovernmental cooperation agreement to establish and maintain a land bank.

"Low income." A household with total income at or below 80% of the area median income, adjusted for household size, as defined annually by the United States Department of Housing and Urban Development.

"Municipality." A county, city, borough, incorporated town, township or home rule municipality.

"Owner-occupant." A natural person with a legal or equitable ownership interest in property which was the primary residence of the person for at least three consecutive months at any point in the year preceding the date of initial delinquency.

"Real property." Land and all structures and fixtures thereon and all estates and interests in land, including easements, covenants and leaseholders.

"School district." Any of the classifications of school districts specified in section 202 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949. The term includes, as to any real property acquired, owned or conveyed by a land bank, the school district within whose geographical jurisdiction the real property is located.

§ 2104. Creation and existence.

(a) **Authority.--**Subject, in a city of the first class, to the home rule charter, a land bank jurisdiction may elect to create a land bank by the adoption of an ordinance to create a binding legal obligation. The ordinance must specify the following:

(1) The name of the land bank.

(2) The number of members of the board.

(3) The names of individuals to serve as initial members of the board and the length of terms which they will serve.

(4) The qualifications, manner of selection or appointment and terms of office of members of the board.

(5) The manner by which residents will be provided an opportunity to have input into the land bank decision-making process.

(6) Policies regarding former owner-occupants who are occupying homes acquired by the land bank. These policies shall show a preference for keeping the former owner-occupants in their homes, whenever feasible.

(7) Additional terms and conditions the land bank jurisdiction deems reasonable and necessary for operation of the land bank.

(b) **Filing.--**The governing body of the land bank jurisdiction which creates a land bank shall file a copy of the ordinance with the department and with the Department of State. After receipt of the ordinance, the Secretary of the Commonwealth shall issue a certificate of incorporation.

(c) **Combinations.--**

(1) The authority under subsection (a) may be exercised in combination pursuant to an intergovernmental cooperation agreement by:

(i) more than one land bank jurisdiction; or

(ii) a land bank jurisdiction and one or more municipalities.

(2) If a land bank is established under paragraph (1), the intergovernmental cooperation agreement must specify matters identified in subsection (a).

(d) Limitation.--Except as set forth in subsection (c), if a county establishes a land bank, the land bank shall have the power to acquire real property only in those portions of the county located outside of the geographical boundaries of any other land bank established by another land bank jurisdiction located partially or entirely within the county.

(e) Participation by school district.--A school district may participate in a land bank pursuant to an intergovernmental cooperation agreement. The agreement must specify the membership, if any, of the school district on the board of the land bank and the actions of the land bank which are subject to approval by the school district.

(f) Legal status of land bank.--A land bank shall:

(1) be a public body corporate and politic; and

(2) have duration until terminated and dissolved under section 2114 (relating to dissolution of land bank).

(g) Collaboration.--A land bank, a political subdivision and another municipal entity may enter into an intergovernmental cooperation agreement relative to the operations of a land bank.

(h) Redevelopment authority.--

(1) A land bank jurisdiction located in a county of the second A, third, fourth, fifth, sixth, seventh or eighth class may, by ordinance, designate a redevelopment authority created for the jurisdiction and operating under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, as land bank for the jurisdiction. The ordinance shall designate the authority as the land bank and contain the specifications of subsection (a)(5), (6) and (7). The ordinance may contain voting or approval requirements as authorized by section 2110(g) (relating to disposition of property). The ordinance shall be filed with the Department of State, which shall note it on the record of incorporation for the authority. The department shall create a model ordinance for the designation.

(2) A redevelopment authority designated under this subsection shall exercise the powers of a land bank under this chapter subject to the following:

(i) The designation shall not affect the organization, membership, eligibility, tenure and compensation of the authority board, except that voting requirements specified in sections 2105(h) (relating to board) and 2115 (relating to conflicts of interest) shall apply to proceedings under this chapter. Upon a vacancy or expiration of the term of a board member occurring after the designation, the land bank jurisdiction shall appoint a replacement to ensure compliance with the requirements of section 2105(b)(3).

(ii) Subject to subparagraph (i), the authority shall establish rules, policies and procedures consistent with this chapter for land bank activities.

(iii) The authority as land bank shall only acquire, hold and dispose of property in accordance with this chapter. Finances of the authority as land bank shall be retained and accounted for separately from finances held for other authority purposes and shall be subject to section 2119 (relating to annual audit and report).

(3) The designation of the authority as land bank may be revoked in the same manner as the dissolution of a land bank under section 2114 (relating to dissolution of land bank).

(June 19, 2018, P.L.221, No.33, eff. 60 days)

2018 Amendment. Act 33 added subsec. (h).

Cross References. Section 2104 is referred to in sections 2105, 2109, 2114 of this title.

§ 2105. Board.

(a) Membership.--A board shall consist of an odd number of members and be not less than five members nor more than 11 members. Unless restricted by the actions or agreements specified in section 2104 (relating to creation and existence) and subject to the limits stated in this section, the size of the board may be adjusted in accordance with bylaws of the land bank.

(b) Eligibility to serve on board.--

(1) Notwithstanding any law to the contrary, a public officer shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office.

(2) A municipal employee shall be eligible to serve as a board member.

(3) An established land bank board shall include at least one voting member who:

(i) is a resident of the land bank jurisdiction;

(ii) is not a public official or municipal employee;

and

(iii) maintains membership with a recognized civic organization within the land bank jurisdiction.

(4) A member removed under subsection (d)(3) shall be ineligible for reappointment to the board unless the reappointment is confirmed unanimously by the board.

(5) As used in this subsection, the term "public officer" means an individual who is elected to a municipal office.

(c) Officers.--The members of the board shall select annually from among their members a chair, vice chair, secretary, treasurer and other officers as the board determines.

(d) Rules.--The board shall establish rules on all of the following:

(1) Duties of officers under subsection (c).

(2) Attendance and participation of members in its regular and special meetings.

(3) A procedure to remove a member by a majority vote of the other members for failure to comply with a rule.

(4) Other matters necessary to govern the conduct of a land bank.

(e) Vacancies.--A vacancy on the board shall be filled in the same manner as the original appointment. Upon removal under subsection (d)(3), the position shall become vacant.

(f) Compensation.--Board members shall serve without compensation. The board may reimburse a member for expenses actually incurred in the performance of duties on behalf of the land bank.

(g) Meetings.--

(1) The board shall meet as follows:

(i) In regular session according to a schedule adopted by the board.

(ii) In special session:

(A) as convened by the chair; or

(B) upon written notice signed by a majority of the members.

(2) A majority of the board, excluding vacancies, constitutes a quorum. When a meeting is conducted through an Internet platform, a quorum may be established with a virtual presence of members or a combination of physical presence and virtual presence of members.

(h) Voting.--

(1) Except as set forth in paragraph (2) or (3), action of the board must be approved by the affirmative vote of a majority of the board present and voting.

(2) Action of the board on the following matters must be approved by a majority of the entire board membership:

(i) Adoption of bylaws.

(ii) Adoption of rules under subsection (d).

(iii) Hiring or firing of an employee or contractor of the land bank. This function may, by majority vote of the entire board membership, be delegated by the board to a specified officer or committee of the land bank.

(iv) Incurring of debt.

(v) Adoption or amendment of the annual budget.

(vi) Sale, lease, encumbrance or alienation of real property or personal property with a value of more than \$50,000.

(3) A resolution under section 2114 (relating to dissolution of land bank) must be approved by two-thirds of the entire board membership.

(4) A member of the board may not vote by proxy.

(5) A member may request a recorded vote on any resolution or action of the land bank.

(i) Immunity.--A land bank jurisdiction which establishes a land bank and a municipality and a school district which are parties to an intergovernmental cooperation agreement establishing a land bank shall not be liable personally on the bonds or other obligations of the land bank. Rights of creditors of a land bank shall be solely against the land bank.

(Nov. 3, 2022, P.L.1934, No.125, eff. 60 days)

2022 Amendment. Act 125 amended subsec. (g)(2).

Cross References. Section 2105 is referred to in sections 2104, 2114 of this title.

§ 2106. Staff.

(a) Employees.--A land bank may employ or enter into a contract for an executive director, counsel and legal staff, technical experts and other individuals and may determine the qualifications and fix the compensation and benefits of those employees.

(b) Contracts.--A land bank may enter into a contract with a municipality for:

(1) the municipality to provide staffing services to the land bank; or

(2) the land bank to provide staffing services to the municipality.

§ 2107. Powers.

A land bank constitutes a public body, corporate and politic, exercising public powers of the Commonwealth necessary or appropriate to carry out this chapter, including the following powers:

(1) To adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its business.

(2) To sue and be sued in its own name and be a party in a civil action. This paragraph includes an action to clear title to property of the land bank.

(3) To adopt a seal and to alter the same at pleasure.

(4) To borrow from Federal Government funds, from the Commonwealth, from private lenders or from municipalities, as necessary, for the operation and work of the land bank.

(5) To issue negotiable revenue bonds and notes according to the provisions of this chapter.

(6) To procure insurance or guarantees from the Federal Government or the Commonwealth of the payment of debt incurred by the land bank and to pay premiums in connection with the insurance or guarantee.

(7) To enter into contracts and other instruments necessary, incidental or convenient to the performance of its duties and the exercise of its powers. This paragraph includes intergovernmental cooperation agreements under 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation) for the joint exercise of powers under this chapter.

(8) To enter into contracts and intergovernmental cooperation agreements with municipalities for the performance of functions by municipalities on behalf of the land bank or by the land bank on behalf of municipalities.

(9) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the land bank. Any contract or instrument signed shall be executed by and for the land bank if the contract or instrument is signed, including an authorized facsimile signature, by:

(i) the chair or vice chair of the land bank; and

(ii) either:

(A) the secretary or assistant secretary of the land bank; or

(B) the treasurer or assistant treasurer of the land bank.

(10) To procure insurance against losses in connection with the real property, assets or activities of the land bank.

(11) To invest money of the land bank at the discretion of the board in instruments, obligations, securities or property determined proper by the board and to name and use depositories for its money.

(12) To enter into contracts for the management of, the collection of rent from or the sale of real property of the land bank.

(13) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate and otherwise improve real property or rights or interests in real property.

(14) To fix, charge and collect rents, fees and charges for the use of real property of the land bank and for services provided by the land bank.

(15) To grant or acquire licenses, easements, leases or options with respect to real property of the land bank.

(16) To enter into partnerships, joint ventures and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development and disposition of real property.

(16.1) To enter into partnerships, joint ventures and other collaborative relationships with other entities, including private developers, for the conversion of vacant,

abandoned, tax-delinquent or otherwise blighted property into housing facilities for homeless individuals.

(17) To organize and reorganize the executive, administrative, clerical and other departments of the land bank and to fix the duties, powers and compensation of employees, agents and consultants of the land bank.

(18) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other law related to the purposes and responsibility of the land bank.

(Nov. 3, 2022, P.L.1934, No.125, eff. 60 days)

2022 Amendment. Act 125 added par. (16.1).

§ 2108. Eminent domain.

A land bank does not possess the power of eminent domain.

§ 2109. Acquisition of property.

(a) Title to be held in its name.--A land bank shall hold in its own name all real property it acquires.

(b) Tax exemption.--

(1) Except as set forth in paragraph (2), the real property of a land bank and its income and operations are exempt from State and local tax.

(2) Paragraph (1) does not apply to real property of a land bank after the fifth consecutive year in which the real property is continuously leased to a private third party. However, real property shall continue to be exempt from State and local taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.

(c) Methods of acquisition.--A land bank may acquire real property or interests in real property by any means on terms and conditions and in a manner the land bank considers proper.

(d) Acquisitions from municipalities.--

(1) A land bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts and land contracts and may accept transfers from municipalities upon terms and conditions as agreed to by the land bank and the municipality.

(2) A municipality may transfer to a land bank real property and interests in real property of the municipality on terms and conditions and according to procedures determined by the municipality as long as the real property is located within the jurisdiction of the land bank.

(3) A redevelopment authority located within a land bank jurisdiction established under this chapter may, with the consent of the local governing body and without a redevelopment contract, convey property which it acquired before the effective date of this paragraph to the land bank. A conveyance under this paragraph shall be with fee simple title, free of all liens and encumbrances.

(e) Maintenance.--A land bank shall maintain all of its real property in accordance with the statutes and ordinances of the jurisdiction in which the real property is located.

(f) Prohibition.--

(1) Subject to the provisions of paragraph (2), a land bank may not own or hold real property located outside the jurisdictional boundaries of the entities which created the land bank under section 2104(c) (relating to creation and existence).

(2) A land bank may be granted authority pursuant to an intergovernmental cooperation agreement with a

municipality to manage and maintain real property located within the jurisdiction of the municipality.

(g) Tax claim bureaus.--A tax claim bureau may transfer to a land bank real property of the county held by the tax claim bureau, as trustee for the county, in a repository for unsold property under section 626 of the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law.

(h) Acquisition of tax delinquent properties.--If authorized by the land bank jurisdiction which created a land bank or otherwise by intergovernmental cooperation agreement, a land bank may accept donations of real property and extinguish delinquent claims for taxes as to the property under section 5.1 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, or section 303 of the Real Estate Tax Sale Law. For the purposes of this subsection, the land bank shall have all rights and obligations of the municipality provided for in section 5.1 of the Municipal Claim and Tax Lien Law and of a local taxing authority provided for in section 303 of the Real Estate Tax Sale Law.

§ 2110. Disposition of property.

(a) Public access to inventory.--A land bank shall maintain and make available for public review and inspection an inventory of real property held by the land bank.

(b) Power.--A land bank may convey, exchange, sell, transfer, lease, grant or mortgage interests in real property of the land bank in the form and by the method determined to be in the best interests of the land bank.

(c) Consideration.--

(1) A land bank shall determine the amount and form of consideration necessary to convey, exchange, sell, transfer, lease as lessor, grant or mortgage interests in real property.

(2) Consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee and other forms of consideration as determined by the board to be in the best interest of the land bank.

(d) Policies and procedures.--

(1) A board shall determine and state in the land bank policies and procedures the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property.

(2) Requirements which may be applicable to the disposition of real property and interests in real property by municipalities shall not be applicable to the disposition of real property and interests in real property by a land bank.

(e) Ranking of priorities.--

(1) A land bank jurisdiction may establish a hierarchical ranking of priorities for the use of real property conveyed by a land bank, including use for:

- (i) Purely public spaces and places.
- (i.1) Housing for homeless individuals.
- (ii) Affordable housing.
- (iii) Retail, commercial and industrial activities.
- (iv) Conservation areas.

(2) The priorities established may be for the entire land bank jurisdiction or may be set according to the needs of different neighborhoods, municipalities or other locations within the land bank jurisdiction, or according to the nature of the real property.

(f) Land use plans.--A land bank shall consider all duly adopted land use plans and make reasonable efforts to coordinate the disposition of land bank real property with such land use plans.

(g) Specific voting and approval requirements.--

(1) A land bank jurisdiction may, in its ordinance creating a land bank or in the case of multiple land bank jurisdictions and municipalities creating a single land bank in the applicable intergovernmental cooperation agreement, require that a particular form of disposition of real property or a disposition of real property located within specified jurisdictions be subject to specified voting and approval requirements of the board.

(2) Except as restricted or constrained under paragraph (1), the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance and other related documents pertaining to the conveyance of real property by the land bank.

(Nov. 3, 2022, P.L.1934, No.125, eff. 60 days)

2022 Amendment. Act 125 added subsec. (e)(1)(i.1).

Cross References. Section 2110 is referred to in section 2104 of this title.

§ 2111. Financing of land bank operations.

(a) General rule.--A land bank may receive funding through grants and loans from:

- (1) the Federal Government;
- (2) the Commonwealth;
- (3) a municipality;
- (4) the land bank jurisdiction which created the land bank; and
- (5) private sources.

(b) Funding.--A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments and for an asset and activity lawfully permitted to a land bank under this chapter.

(c) Allocated real property taxes.--

(1) A taxing jurisdiction may authorize the remittance or dedication of a portion of real property taxes collected pursuant to the laws of this Commonwealth to a land bank on real property conveyed by a land bank.

(2) Allocation of property tax revenues in accordance with this subsection, if authorized by the taxing jurisdiction, shall commence with the first taxable year following the date of conveyance and continue for a period of up to five years and may not exceed a maximum of 50% of the aggregate property tax revenues generated by the property.

(3) Remittance or dedication of real property taxes shall include the real property taxes of a school district only if the school district enters into an agreement with the land bank for the remittance or dedication.

§ 2112. Borrowing and issuance of bonds.

(a) Authority.--

(1) A land bank may issue a bond for any of its corporate purposes.

(2) The principal and interest of a bond shall be payable from the land bank's general revenue.

(3) The bond may be secured by any of the following:

(i) A pledge of revenue. This subparagraph includes a grant or contribution from:

(A) The Federal Government or a Federal agency or instrumentality.

(B) The Commonwealth, a Commonwealth agency or an instrumentality of the Commonwealth.

(ii) A mortgage of property of the land bank.

(b) Nature.--The bond must meet the requirements of 13 Pa.C.S. § 3104 (relating to negotiable instrument).

(c) Tax exempt.--A bond and the income from the bond is exempt from taxation by:

(1) the Commonwealth; or

(2) a political subdivision.

(d) Procedure.--

(1) A bond must be authorized by resolution of the board and shall be a limited obligation of the land bank.

(2) The principal and interest, costs of issuance and other costs incidental to the bond shall be payable solely from the income and revenue derived from the sale, lease or other disposition of the assets of the land bank. The land bank may secure the bond by a mortgage or other security device covering all or part of the project from which the pledged revenues may be derived.

(3) A refunding bond issued under this section:

(i) shall be payable from:

(A) a source described in this chapter; or

(B) the investment of the proceeds of the refunding bonds; and

(ii) shall not constitute an indebtedness or pledge of the general credit of a political subdivision within the meaning of a constitutional or statutory limitation of indebtedness and shall contain a recital to that effect.

(4) A bond must comply with the authorizing resolution as to:

(i) form;

(ii) denomination;

(iii) interest rate;

(iv) maturity; and

(v) execution.

(5) A bond may be subject to redemption at the option of and in the manner determined by the board in the authorizing resolution.

(e) Powers of municipalities.--A municipality may elect to guarantee, insure or otherwise become primarily or secondarily obligated on the indebtedness of a land bank, subject, however, to all other provisions of law of this Commonwealth applicable to municipal indebtedness.

(f) Sale.--

(1) A bond shall be issued, sold and delivered in accordance with the terms and provisions of the authorizing resolution. The board, to effectuate its best interest, may determine the manner of sale, public or private, and the price of the bond.

(2) The resolution issuing a bond must be published in a newspaper of general circulation within the jurisdiction in which the land bank is located.

(g) Liability.--

(1) Neither the members of a land bank nor a person executing the bond shall be liable personally on the bonds by reason of the issuance of the bond.

(2) The bond or other obligation of a land bank related to a bond shall not be a debt of a municipality or of the Commonwealth. A statement to this effect shall appear on the face of the bond or obligation.

(3) On the bond or other obligation of a land bank related to a bond, all of the following apply:

(i) The Commonwealth has no liability. This subparagraph applies to the revenue and property of the Commonwealth.

(ii) A municipality has no liability. This subparagraph applies to the revenue and property of a municipality.

§ 2113. Public records and public access.

(a) **Public records.**--A board shall keep minutes and a record of its proceedings.

(b) **Public access.**--A land bank is subject to:

(1) 65 Pa.C.S. Ch. 7 (relating to open meetings); and

(2) the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

§ 2114. Dissolution of land bank.

(a) **General rule.**--A land bank may be dissolved as a public body corporate and politic upon compliance with all of the following:

(1) Sixty calendar days' advance written notice of consideration of a resolution to request dissolution must:

(i) be given to the land bank jurisdiction which created the land bank;

(ii) be published in a local newspaper of general circulation; and

(iii) be sent by certified mail to the trustees of outstanding bonds of the land bank.

(2) A resolution requesting dissolution must be approved under section 2105(h)(3) (relating to board).

(b) **Authority.**--Upon receipt of a proper resolution described in subsection (a)(1), the land bank jurisdiction which created the land bank may dissolve the land bank by adoption of an ordinance subject to the approval of the mayor in a city or the county executive in a home rule county. If approved, the governing body of the land bank jurisdiction which created the land bank shall file a certified copy of the ordinance with the Department of State, and the Secretary of the Commonwealth shall cause the termination of the existence of the land bank to be noted on the record of incorporation. Upon such filing, the land bank shall cease to function. The Secretary of the Commonwealth shall also notify the department of the dissolution of the land bank.

(c) **Transfer of assets.**--Upon dissolution of the land bank, real property, personal property and other assets of the land bank shall become the assets of the municipality in which the property is located. The following shall apply:

(1) Personal property, including financial assets, of the land bank shall be divided among participating land bank jurisdictions in proportion to the population of each jurisdiction.

(2) The municipality in which real property is located shall approve the transfer of title to the municipality.

(d) **Multiple jurisdictions.**--If multiple land bank jurisdictions create a land bank under section 2104(c) (relating to creation and existence), the withdrawal of one or more land bank jurisdictions shall not require dissolution of the land bank unless:

(1) the intergovernmental cooperation agreement provides for dissolution in this event; and

(2) there is no land bank jurisdiction which desires to continue the existence of the land bank.

Cross References. Section 2114 is referred to in sections 2104, 2105 of this title.

§ 2115. Conflicts of interest.

(a) **State Adverse Interest Act.**--The acts and decisions of members of a board and of employees of a land bank shall be subject to the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.

(b) **Ethical standards.**--Board members and land bank employees are subject to 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure).

(c) **Supplemental rules and guidelines.**--The board may adopt:

(1) supplemental rules addressing potential conflicts of interest; and

(2) ethical guidelines for members of the board and land bank employees.

Cross References. Section 2115 is referred to in section 2104 of this title.

§ 2116. Construction, intent and scope.

This chapter shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authorization for the implementation of this chapter, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

§ 2117. Delinquent property tax enforcement.

(a) **Power to discharge liens and claims.**--

(1) Except as set forth in paragraph (2), a land bank may, by resolution of the board, discharge a lien or claim to its real property for tax owed to the members of the land bank.

(2) For a land bank to discharge a lien or claim to its real property under paragraph (1) for tax owed to a school district, the governing body of the school district must approve the discharge.

(3) The land bank must file evidence of the extinguishment and dissolution of liens or claims with the county tax claim bureau, including copies of the resolution by the board, the intergovernmental agreement, receipt of payment and other necessary and appropriate documentation. This requirement must be satisfied no later than the earlier of:

(i) ten days prior to the conveyance of the property; or

(ii) within 30 days after the discharge.

(b) **Remittance of payments.**--To the extent that a land bank receives payments attributable to a lien or claim for real property taxes owed to a municipality or school district on property acquired by the land bank, the land bank shall remit the full amount of the payments to the municipality or school district.

(c) **Procedure relating to Real Estate Tax Sale Law.**--For a land bank located in a municipality which follows the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law, all of the following apply:

(1) Depending upon the time of filing, the following apply:

(i) For a tax claim filed under the Real Estate Tax Sale Law, the municipality:

(A) may direct the county tax claim bureau to assign the claim or lien to the land bank under terms mutually acceptable to the municipality and land bank; and

(B) shall otherwise confer upon the land bank the rights, privileges and remedies of an assignee under section 316 of the Real Estate Tax Sale Law.

(ii) For a tax claim to be filed under the Real Estate Tax Sale Law, a municipality which has complied with section 26 of the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, and section 306 of the Real Estate Tax Sale Law:

(A) may assign and transfer the claim to the land bank upon terms and conditions mutually acceptable to the municipality and the land bank; and

(B) shall otherwise confer upon the land bank the rights, privileges and remedies of an assignee under section 316 of the Real Estate Tax Sale Law.

(iii) For tax liens assigned to the land bank under subparagraph (i) or (ii), the land bank shall adopt policies providing for plans and agreements by which low-income, owner-occupant households may pay their delinquent taxes. Such plans and agreements shall take into account the household's ability to pay and shall be designed to promote the continued occupancy by that household whenever feasible.

(2) All of the following apply to upset sales:

(i) The land bank and the plaintiff in the claim may enter into an agreement for the land bank to purchase the property at the minimum amount described in section 605 of the Real Estate Tax Sale Law in the event there is no bid tendered for a higher amount than the minimum amount.

(ii) If there is an agreement under subparagraph (i) and no one bids a higher price than the minimum amount described in section 605 of the Real Estate Tax Sale Law, the property shall be sold to the land bank upon payment by the land bank for the upset sale costs and all liens, claims and subordinate encumbrances shall be discharged by the sale.

(3) All of the following apply to judicial sales:

(i) Notwithstanding section 612 of the Real Estate Tax Sale Law, the form, substance and timing of the land bank's payment of the sales price may be according to the agreement as is mutually acceptable to the plaintiff and the land bank if all of the following apply:

(A) A judicial sale is ordered pursuant to a judgment on a tax claim.

(B) The purchaser of the property is the land bank.

(C) The sales price is an amount agreed to by the land bank and the plaintiff in the claim.

(ii) The obligation of the land bank to perform in accordance with the agreement under subparagraph (i) shall be deemed to be in full satisfaction of the tax claim which was the basis for the judgment.

(iii) The land bank, as purchaser at the sale, shall have an absolute title to the property sold, free and

discharged of tax and municipal claims, liens, mortgages, ground rents, charges and estates.

(4) The notice and return under sections 602 and 607(a) of the Real Estate Tax Sale Law must contain reference to a potential bid by the land bank.

(5) The deed to the land bank under sections 608 and 615 of the Real Estate Tax Sale Law shall be delivered and acknowledged and recorded within 30 days of the date of confirmation.

(6) All of the following apply to judicial sales for multiple tracts:

(i) In a petition for a judicial sale, the municipality or the land bank, if it is the holder of municipal tax liens, may combine in a single petition multiple tracts of real property if the petition and accompanying affidavits provide all of the following:

(A) Identification of each tract of real property.

(B) The identities of each party having an interest in a tract of real property.

(C) The amount of the tax liens then due and owing, together with associated interest, costs and fees.

(D) The nature of the notice of the proposed sale provided to the interested parties.

(ii) The court may authorize in a single final judgment that all or part of the real properties identified in the petition be sold free and clear of tax and municipal claims, mortgages, liens, charges and estates and ground rents.

(d) Procedure relating to Municipal Claim and Tax Lien

Law.--For a land bank located in a municipality which follows the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, all of the following apply:

(1) Regardless of the time of filing, the municipality:

(i) may assign and transfer a tax or municipal claim to the land bank upon terms and conditions mutually acceptable to the municipality and land bank;

(ii) shall otherwise confer upon the land bank the rights, privileges and remedies of an assignee as stated in section 33 of the Municipal Claim and Tax Lien Law; and

(iii) for tax liens assigned to the land bank under this section, the land bank shall adopt policies providing for plans and agreements by which low-income, owner-occupant households may pay their delinquent taxes. Such plans and agreements shall take into account the household's ability to pay and shall be designed to promote the continued occupancy by that household whenever feasible.

(2) All of the following apply to upset sales:

(i) The land bank and the plaintiff in the claim may enter into an agreement for the land bank to purchase the property at the minimum amount described in section 29 of the Municipal Claim and Tax Lien Law in the event there is no bid tendered for a higher amount than the minimum amount.

(ii) If there is an agreement under subparagraph (i) and no one bids a higher price than the minimum amount described in section 29 of the Municipal Claim and Tax Lien Law, the property shall be sold to the land bank upon payment by the land bank for the upset sale

costs and liens, and claims and subordinate encumbrances shall be discharged by the sale.

(3) All of the following apply to judicial sales:

(i) Notwithstanding section 31 of the Municipal Claim and Tax Lien Law, the form, substance and timing of the land bank's payment of the sales price may be according to the agreement mutually acceptable to the plaintiff and the land bank if all of the following apply:

(A) A judicial sale is ordered pursuant to a judgment on a tax or municipal claim.

(B) The purchaser of the property is the land bank.

(C) The sales price is an amount agreed to by the land bank and the plaintiff.

(ii) The obligation of the land bank to perform in accordance with the agreement under subparagraph (i) shall be deemed to be in full satisfaction of the municipal claim which was the basis for the judgment.

(iii) The land bank, as purchaser at the sale, shall have an absolute title to the property sold, free and discharged of tax and municipal claims, liens, mortgages, ground rents, charges and estates.

(4) Notwithstanding sections 31.1 and 31.2 of the Municipal Claim and Tax Lien Law and sections 4 and 6 of the act of March 1, 1956 (1955 P.L.1196, No.372), entitled "An act authorizing the sale of vacant land located in areas certified as conservation areas in counties of the first class, under a judgment obtained on a tax claim, by the sheriff of the county; providing for the discharge of all liens, mortgages, ground rents, estates and claims against the property by sale; and limiting the right of redemption," all of the following apply:

(i) The land bank may tender a bid at the sale in an amount equal to the total amount of all municipal claims and liens which were the basis for the judgment. Upon tender under this subparagraph, the property shall be deemed sold to the land bank regardless of bids by other parties.

(ii) The bid of the land bank shall be paid as to its form, substance and timing according to an agreement that is mutually acceptable to the plaintiff and the land bank. The obligation of the land bank to perform in accordance with the agreement shall be deemed to be in full satisfaction of the tax or municipal claim which was the basis for the judgment.

(iii) The land bank, as purchaser at the sale, shall have an absolute title to the property sold, free and discharged of tax and municipal claims, liens, mortgages, ground rents, charges and estates.

(iv) The deed to the land bank shall be executed, acknowledged and delivered within 30 days of the sale.

(5) All of the following apply to judicial sales for multiple tracts:

(i) In a petition for a judicial sale, a municipality or a land bank, if it is the holder of municipal tax liens, may combine in a petition multiple tracts of real property if the petition and accompanying affidavits provide all of the following:

(A) Identification of each tract of real property.

(B) The identities of each party having an interest in a tract of real property.

(C) The amount of the taxes then due and owing.

(D) The nature of the notice of the proposed sale provided to the interested parties.

(ii) The court may authorize in a single final judgment that all or part of the real properties identified in the petition be sold free and clear of tax and municipal claims, mortgages, liens, ground rents, charges and estates.

(e) Procedure relating to Second Class City Treasurer's Sale and Collection Act.--For a land bank located in a municipality which follows the act of October 11, 1984 (P.L.876, No.171), known as the Second Class City Treasurer's Sale and Collection Act, all of the following apply:

(1) Regardless of the time of filing, a municipality:

(i) may assign and transfer a tax or municipal claim to the land bank under the Second Class City Treasurer's Sale and Collection Act upon terms and conditions mutually acceptable to the municipality and the land bank; and

(ii) shall otherwise confer upon the land bank the rights, privileges and remedies of the municipality under the Second Class City Treasurer's Sale and Collection Act.

(iii) For tax liens assigned to the land bank under this section, the land bank shall adopt policies providing for plans and agreements by which low-income, owner-occupant households may pay their delinquent taxes. Such plans and agreements shall take into account the household's ability to pay and shall be designed to promote the continued occupancy by that household whenever feasible.

(2) All of the following apply to upset sales:

(i) The land bank and the plaintiff in the claim may enter into an agreement for the land bank to purchase the property for the minimum amount of the upset sale price described in section 301 of the Second Class City Treasurer's Sale and Collection Act in the event there is no bid tendered for a higher amount than the minimum amount.

(ii) The land bank may tender a bid for the mutually agreed upset sale price.

(iii) Notwithstanding section 301 of the Second Class City Treasurer's Sale and Collection Act, the bid of the land bank shall be paid as to its form, substance and timing according to an agreement between the municipality and land bank. The obligation of the land bank to perform in accordance with the agreement shall be deemed to be in full satisfaction of the tax or claim which was the basis for the sale.

(3) The notice and advertisement under sections 203 and 204 of the Second Class City Treasurer's Sale and Collection Act must contain reference to a potential bid by the land bank.

(4) Subject to redemption under section 304 of the Second Class City Treasurer's Sale and Collection Act and confirmation under section 305 of the Second Class City Treasurer's Sale and Collection Act, the land bank, as purchaser at the sale, shall have an absolute title to the property sold, free and discharged of tax and municipal claims, liens, mortgages, ground rents, charges and estates.

(5) The deed to the land bank under section 307 of the Second Class City Treasurer's Sale and Collection Act shall be delivered, acknowledged and recorded within 30 days of the date of confirmation.

(e.1) Land bank.--Notwithstanding subsections (d) and (e), in counties of the second class containing a city of the second class, a land bank may not engage in any of the following absent an agreement with a county, city, borough, incorporated town, township, school district or body politic and corporate created as a municipal authority pursuant to law whose claims comprise the upset sales price:

(1) Purchase property for less than the upset sales price described in section 29 of the Municipal Claim and Tax Lien Law or section 301 of the Second Class City Treasurer's Sale and Collection Act.

(2) Alter the form, substance or timing of the payment of the sales price by the land bank.

(f) Involuntary transfers.--A land bank which acquires real property under this section shall be deemed to have acquired the real property as an involuntary transfer within the meaning of section 701(b)(1)(vi)(B) of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

(g) Expiration.--This section shall expire upon publication of the notice under section 2120 (relating to determination on procedural revision).

Cross References. Section 2117 is referred to in section 2120 of this title.

§ 2118. Expedited quiet title proceedings.

(a) Authorization.--

(1) A land bank may file an action to quiet title to real property in which the land bank has an interest.

(2) A land bank may join in a single complaint to quiet title to one or more parcels of real property.

(3) For purposes of an action under this section, the land bank shall be deemed to be the holder of sufficient legal and equitable interests and possessory rights so as to qualify the land bank as an adequate complainant in the action.

(b) Procedural requirements.--

(1) Prior to the filing of an action to quiet title, the land bank must conduct an examination of title to determine the identity of any person possessing a claim or interest in or to the real property.

(2) Service of the complaint to quiet title shall be provided to interested parties as follows:

(i) By first class mail to the identity and address reasonably ascertainable by an inspection of public records.

(ii) In the case of occupied real property, by first class mail, addressed to "Occupant."

(iii) By posting a copy of the notice on the real property.

(iv) By publication.

(v) As ordered by the court.

(3) As part of the complaint to quiet title, the land bank must file an affidavit identifying:

(i) persons discovered under paragraph (1); and

(ii) the form of service under paragraph (2).

(c) Hearing.--

(1) The court shall schedule a hearing on the complaint within 90 days following filing of the complaint and as to

all matters upon which an answer was not filed by an interested party.

(2) The court shall issue its final judgment within 120 days of the filing of the complaint.

§ 2119. Annual audit and report.

The following shall apply:

(1) The land bank shall annually, within 120 days after the end of the fiscal year, submit an audit of income and expenditures, together with a report of its activities for the preceding year, to the department.

(2) A duplicate of the audit and the report shall be filed with the governing body of:

(i) the land bank jurisdiction which created the land bank; and

(ii) each political subdivision which opted to participate in the land bank pursuant to an intergovernmental agreement.

Cross References. Section 2119 is referred to in section 2104 of this title.

§ 2120. Determination on procedural revision.

If the department determines that comprehensive reform legislation on property-tax foreclosure has been enacted revising procedure under the statutory provisions referred to in section 2117 (relating to delinquent property tax enforcement), the department shall transmit notice of the determination to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

Cross References. Section 2120 is referred to in section 2117 of this title.

§ 2121. Exemption from realty transfer tax.

A transfer of real property to or from a land bank shall be exempt from both the State and local realty transfer tax under Articles XI-C and XI-D of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and section 301.1 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

(Nov. 3, 2022, P.L.1934, No.125, eff. 60 days)

2022 Amendment. Act 125 added section 2121.

CHAPTER 23

REAL ESTATE FORECLOSURE

Subchapter

A. Vacant and Abandoned Property

B. Sheriff's Commission and Creditor Attorney Fees

Enactment. Chapter 23 was added June 19, 2018, P.L.208, No.32, effective in 180 days.

Applicability. Section 2 of Act 32 of 2018 provided that Act 32 shall apply to proceedings commenced before, on or after the effective date of section 2.

SUBCHAPTER A

VACANT AND ABANDONED PROPERTY

Sec.

2301. Short title of subchapter.

2302. Legislative findings and purpose.

- 2303. Definitions.
- 2304. Certification of vacant and abandoned mortgaged property.
- 2305. Requirements to certify mortgaged property as vacant and abandoned.
- 2306. Effect of certification of vacancy and abandonment.
- 2307. Post-sheriff's sale possessory action, effect of certification of vacancy and abandonment in action for possession and disposition of abandoned personal property.
- 2308. Construction.

Cross References. Subchapter A is referred to in section 2312 of this title.

§ 2301. Short title of subchapter.

This subchapter shall be known and may be cited as the Vacant and Abandoned Real Estate Foreclosure Act.

§ 2302. Legislative findings and purpose.

The General Assembly finds and declares that:

(1) Vacant and abandoned real estate, coupled with a default in the obligation to make mortgage payments secured by that real estate, presents a danger to the health, safety and welfare of a community.

(2) Vacant and abandoned real estate often is not repaired, restored and returned to productive use until either a creditor or municipality acquires title to the real estate.

(3) An accelerated procedure is needed to maintain the due process rights of owners of real estate and to reduce unnecessary delays in an action of mortgage foreclosure or an action for possession or similar actions to recover real estate that is vacant and abandoned.

§ 2303. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Action for possession." An action in ejectment initiated by a purchaser to take control of mortgaged property.

"Action to quiet title." An action to resolve claims to title to a mortgaged property initiated by a creditor or purchaser.

"Creditor." A person authorized to enforce an obligation secured by a mortgage or an authorized agent of the creditor, including a servicer.

"Foreclosure action." An action initiated by a creditor to enforce a mortgage obligation.

"Former owner." An owner or obligor, or a successor in interest of an owner or obligor, whose interest in a mortgaged property was foreclosed in an action of mortgage foreclosure, conveyed by a deed in lieu of foreclosure or divested by court order under a mortgage or other obligation, including a successor in interest or other person claiming rights under or through the owner or obligor.

"Mortgage." A consensual interest in real property that secures an obligation.

"Mortgaged property." Real property that is subject to a mortgage and improved with buildings or structures intended for any type of human occupancy, including a formerly mortgaged property conveyed to a purchaser at a sheriff's sale or pursuant to a deed in lieu of foreclosure.

"Municipal board of appeals." The body designated to review decisions of a municipal code enforcement officer under the act

of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.

"Municipal code enforcement officer." The official designated to administer and enforce building codes in a municipality designated under section 501 of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.

"Municipality." A city, borough, township or incorporated town.

"Obligation." A debt or other duty or liability of an obligor secured by a mortgage.

"Obligor." A person that:

- (1) owes payment or performance of an obligation;
- (2) has signed a mortgage agreement with respect to mortgaged property; or
- (3) is otherwise accountable in whole or in part for payment or performance of an obligation.

"Owner." A person claiming the right to ownership, possession or use of a mortgaged property.

"Proceeding." A foreclosure action, an action for possession or an action to quiet title relating to a mortgaged property.

"Property address." The address of a mortgaged property, unless a different address is provided by the owner or obligor in mortgage documents for notification of the owner or obligor or in subsequent correspondence sent by the owner or obligor to change the address for notification specified for use in mortgage documents.

"Purchaser." Any of the following:

- (1) a person that acquires equitable title to a mortgaged property at a sheriff's sale conducted pursuant to a foreclosure or similar action and has paid settlement funds and delivered required documentation to the sheriff to obtain a sheriff's deed or the owner of a property under a recorded sheriff's deed to the property or the person's designee;
- (2) the owner of a mortgaged property under a recorded sheriff's deed to the mortgaged property; or
- (3) a person that takes title to a mortgaged property pursuant to a deed in lieu of foreclosure.

"Record." As a noun, the term means information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.

"Residential mortgaged property." A mortgaged property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed, including a residential condominium, cooperative or planned community unit.

"Servicer." A person that is responsible for servicing an obligation, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation.

"Vacant and abandoned property." Property that meets the requirements for certification as provided under section 2305 (relating to requirements to certify mortgaged property as vacant and abandoned).

"Vacant property." Mortgaged property with respect to which the owner and all persons claiming through the owner, including tenants, have relinquished possession. The term does not include unoccupied mortgaged property that is:

- (1) undergoing construction, renovation or rehabilitation and that is proceeding with reasonable diligence to completion;

(2) physically secured and used or held for use by the homeowner as a vacation or seasonal home; or

(3) physically secured and the subject of a probate action or other litigation in which ownership is contested.

§ 2304. Certification of vacant and abandoned mortgaged property.

(a) General rule.--After a creditor gives notice to an obligor of a delinquency or other default with respect to an obligation secured by a mortgage or initiates a foreclosure action or action for possession or to quiet title, a mortgaged property for which the notice is given or proceedings are initiated shall be certified as vacant and abandoned if:

(1) a creditor or purchaser has been designated as a conservator of the mortgaged property under section 5 of the act of November 26, 2008 (P.L.1672, No.135), known as the Abandoned and Blighted Property Conservatorship Act;

(2) the mortgaged property is certified as vacant and abandoned by the municipality in which the mortgaged property is located in the manner provided under subsection (b); or

(3) the mortgaged property is certified as vacant and abandoned in a proceeding in the manner provided under subsection (c).

(b) Municipal certification.--A mortgaged property shall be deemed vacant and abandoned by the municipality in which the mortgaged property is located if:

(1) A creditor requests that the municipal code enforcement officer for the municipality make a determination that the mortgaged property is vacant and abandoned.

(2) The municipal code enforcement officer inspects the mortgaged property, determines that the mortgaged property is vacant and abandoned under the requirements of section 2305 (relating to requirements to certify mortgaged property as vacant and abandoned) and gives notice of the determination and an opportunity for hearing to the owner or an obligor other than the owner in the manner required under 2 Pa.C.S. § 553 (relating to hearing and record) or as otherwise provided by law for the giving of notice of municipal code violations and to contest determinations that violations have occurred.

(3) The creditor pays or agrees to pay a fee not to exceed 110% of the reasonable costs for the municipal code inspection officer to conduct an inspection of the mortgaged property, to prepare a report of the inspection, to give notice of the results of the inspection to the creditor and the obligor and to participate in an appeal of a determination that the mortgaged property is vacant and abandoned.

(4) The owner or obligor, after receiving notice and an opportunity for a hearing, fails to seek review of a determination that the mortgaged property is vacant and abandoned by the municipal board of appeals within 30 days or, if a timely request for review is filed, a final determination is made that the mortgaged property is vacant and abandoned.

(c) Judicial certification.--A mortgaged property shall be deemed certified as vacant and abandoned in a proceeding as follows:

(1) In a proceeding, a creditor or purchaser may file a request with the prothonotary to issue a rule to show cause why the mortgaged property should not be certified as vacant and abandoned by submitting an affidavit:

(i) supported as appropriate by images or other appropriate evidence, alleging that the mortgaged property qualifies for certification as vacant and abandoned under the requirements of section 2305; and

(ii) submitted subject to the penalties for false swearing under 18 Pa.C.S. § 4903 (relating to false swearing).

(iii) The request may be filed together with the original complaint in the proceeding or at any time during the course of the proceeding.

(2) The affidavit that the mortgaged property is vacant and abandoned may be provided by a municipal code enforcement officer, the creditor or purchaser or by a competent adult who has personal knowledge of the condition of the mortgaged property, including a property inspector or agent retained by a creditor.

(3) A request for a rule to show cause need not be served on the owner of the mortgaged property or an obligor other than the owner, but the rule issued by the prothonotary shall be served on the owner or obligor in the manner provided under paragraph (5).

(4) Within 10 business days of receipt of the request for a rule to show cause, the prothonotary shall provide a rule to show cause to the creditor or purchaser if the affidavit contains assertions of fact that comply with the requirements for certification as vacant and abandoned as provided under section 2305.

(5) The rule to show cause shall be served on the owner and an obligor other than the owner by the creditor or purchaser as follows:

(i) If the owner or an obligor other than the owner is represented by counsel in a proceeding in which the rule to show cause is issued, the rule may be served by delivery of the rule to show cause to counsel for the owner or obligor.

(ii) If the owner or an obligor other than the owner is not represented by counsel in the proceeding, the creditor shall make at least three attempts to personally serve the rule to show cause. Attempts at personal service may occur at the property address and the address specified in the county tax assessor's office for the delivery of property tax bills for the mortgaged property. The attempts shall be at least 72 hours apart and at reasonable and different times of the day. If the creditor cannot complete personal service on a party, service may be completed by delivery of notice by first class mail to the addresses at which personal service may be made and by posting of the property in a conspicuous manner.

(iii) A rule to show cause may be served on the owner or an obligor other than the owner in the manner provided under this paragraph regardless of whether service of a complaint in a proceeding has been completed.

(6) A copy of the rule to show cause shall be delivered by the creditor or purchaser by first class mail to the municipal code enforcement officer for the municipality where the mortgaged property is located.

(7) An obligor may respond to the rule to show cause by filing with the court a statement, submitted under oath or affirmation that attests the statement is true and subject to the penalties under 18 Pa.C.S. § 4903, that the mortgaged

property is not vacant and abandoned on a form provided by the creditor or purchaser as specified below and containing other information as may be required by the court. Only response blocks to deny averments of indicia that a property is vacant or abandoned provided in the request for issuance of the rule to show cause shall be included in the form. The response shall include:

- (i) Matter name and docket number.
- (ii) Respondent or respondents.
- (iii) Address or mortgaged property.
- (iv) The respondent or respondents to this rule to show cause certify that the mortgaged property is not vacant and abandoned for the following reasons as designed by checking all appropriate spaces below:

-The property is not vacant and has been occupied within the last 45 days by (specify name or names of persons).
-Multiple windows, doors or entrances on the property are not boarded up, unhinged, closed off, smashed in or are continuously unlocked.
-The mortgaged property has not been stripped of copper or other metals.
-Interior furnishings, personal items, appliances or fixtures have not been removed from the mortgaged property, including window treatments, such as blinds, curtains or shutters.
-Gas, electric, water or sewer utility services have not been terminated to the mortgaged property or are established in the name of the creditor to preserve the mortgaged property.
-Newspapers, circulars, flyers or mail have not accumulated on the mortgaged property.
-The United States Postal Service has not discontinued delivery to the mortgaged property.
-Rubbish, trash, debris, neglected vegetation or natural overgrowth has not accumulated on the mortgaged property.
-Hazardous, noxious or unhealthy substances or materials have not accumulated on the mortgaged property.
-No communications have occurred between respondents and (name of the creditor or purchaser) stating an intent to vacate or abandon the property.

With respect to the following violations of municipal building or housing code (violation to be specified by the creditor or purchaser):

-No citations alleging violations have been received.

-Answers alleging that the violations did not occur and at this time no final determination has been made regarding whether the violations exist, or the citations were dismissed.
-The violations have been corrected within the preceding year.

The respondent or respondents whose signature appears below certify under the penalties provided under 18 Pa.C.S. § 4903 (relating to false swearing) with respect to official matters that the statements above are true and correct.

(Signature of the respondent or respondents).

(8) If a response to the rule to show cause is not filed within 20 days after being served, the court shall render an order certifying the mortgaged property as vacant and abandoned.

(9) If a timely response to the rule to show cause is filed, the court shall schedule a hearing to determine if credible evidence exists to certify the mortgaged property as vacant and abandoned within not fewer than 20 nor more than 30 days after proof of service of the rule to show cause in the manner provided under paragraph (5).

Cross References. Section 2304 is referred to in section 2305 of this title.

§ 2305. Requirements to certify mortgaged property as vacant and abandoned.

(a) General rule.--A mortgaged property may be certified as vacant and abandoned by a municipal code enforcement officer under section 2304(b) (relating to certification of vacant and abandoned mortgaged property) or in a judicial proceeding under section 2304(c) if the mortgaged property is vacant and satisfies at least three of the following indicia of abandonment:

(1) Multiple windows, doors or entrances on the property are boarded up, unhinged, closed off, smashed in or are continuously unlocked.

(2) The mortgaged property has been stripped of copper or other metals.

(3) Interior furnishings, personal items, appliances or fixtures have been removed from the mortgaged property, including window treatments, such as blinds, curtains or shutters.

(4) Gas, electric, water or sewer utility services have been terminated to the mortgaged property or are established in the name of the creditor to preserve the mortgaged property.

(5) Newspapers, circulars, flyers or mail has accumulated on the mortgaged property or the United States Postal Service has discontinued delivery to the mortgaged property.

(6) Rubbish, trash, debris, neglected vegetation or natural overgrowth has accumulated on the mortgaged property.

(7) Multiple municipal building or housing code violations exist for the mortgaged property and the violations have been documented as being uncorrected during the preceding year.

(8) Written and signed statements have been issued by the mortgaged property's adjoining neighbors, adjacent

neighbors, delivery persons or a municipal code enforcement officer indicating that the mortgaged property is vacant and abandoned.

(9) Hazardous, noxious or unhealthy substances or materials have accumulated on the mortgaged property.

(10) A communication from the owner or obligor stating that both the owner and any obligor have vacated or abandoned the property or intend to do so.

(b) Determining vacancy.--Competent evidence may be relied on to determine that a mortgaged property is vacant, including evidence that:

(1) The mortgaged property was found to be vacant at the time of two inspections occurring at least 45 days apart.

(2) After the first inspection the mortgaged property was posted with a notice advising an occupant of the mortgaged property to immediately contact the person who conducted the inspection and advising that failure to do so may have adverse legal consequences.

(3) No response was received to the notice posted after the first inspection from a person legally entitled to occupy the mortgaged property prior to the second inspection.

(c) Corrective action by creditor or purchaser.--The remediation of conditions that provide evidence of abandonment under subsection (b) by the creditor or purchaser or corrective action taken by a municipality or other person to protect the public health and welfare shall not prevent a mortgaged property from meeting the requirements to be certified as vacant and abandoned.

Cross References. Section 2305 is referred to in sections 2303, 2304 of this title.

§ 2306. Effect of certification of vacancy and abandonment.

(a) Foreclosure action.--In a foreclosure action, a mortgaged property certified as vacant and abandoned shall not be subject to mediation, conciliation, diversion or other program established by a local court to encourage resolution of owner-occupied residential mortgage foreclosures.

(b) Service and notification.--Following a certification that a mortgaged property is vacant and abandoned, any subsequent documents required to be served on and any notices required to be delivered to the owner, any obligor other than the owner or a former owner may be exclusively served and delivered by first class mail to an address specified by the owner, obligor or former owner for the receipt of communications relating to the property or, if no address is specified, by delivery to the address of the mortgaged property and by posting of notice in a conspicuous location on the mortgaged property.

(c) Scheduling of sheriff's sale.--

(1) If a mortgaged property is certified as vacant and abandoned, upon the request of a creditor or purchaser, the sheriff, on receipt of an accelerated sale fee of \$500, shall schedule a sale of the mortgaged property to be conducted no later than 60 days following the filing of the writ of execution and the sheriff's deed must be recorded no later than 30 days following the sale.

(2) The accelerated sale fee shall be payable at the time of the filing of the writ of execution and shall be immediately refunded if:

(i) the time frames specified in this subsection are not complied with; or

(ii) the expedited sale date is postponed or continued by a party other than the creditor.

(d) Scheduling of execution of writ of possession.--

(1) If a mortgaged property is certified as vacant and abandoned, upon the requests of a creditor or purchaser, the sheriff, on the receipt of an additional fee of \$250, shall execute and serve a writ of possession no later than 20 days following delivery of the writ to the sheriff.

(2) In order to impose the additional fee, the sheriff must schedule the removal of a former owner's personal property from the mortgaged property and the securing of the personal property to be conducted no later than 30 days following the filing of the writ of execution.

(3) The additional fee shall be immediately refunded if:

(i) the time frames provided under this section are not complied with; or

(ii) the expedited execution is postponed or continued by a party other than the purchaser.

(e) Possession of mortgaged property pending foreclosure.--If a mortgaged property is certified as vacant and abandoned, or with the consent of the owner or an obligor other than the owner, the creditor may enter the mortgaged property peacefully for the purpose of inspecting, maintaining and repairing the mortgaged property and shall not be liable to the owner for trespass or for damage to the property resulting from a cause other than the creditor's gross negligence or willful misconduct.

(f) Property maintenance.--

(1) The maintenance obligations of a creditor that exercises the right to possession pending foreclosure are limited to compliance with property maintenance requirements of the Federal Housing Administration for loans insured by the administration or of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation for mortgages held by either respective entity.

(2) For other creditors, the mortgaged property maintenance obligations of a creditor that exercises its right to possession pending foreclosure shall be limited to:

(i) Care for the yard and exterior of a building on vacant and abandoned mortgaged property, including removing excessive foliage growth that diminishes the value of surrounding properties.

(ii) Measures reasonably necessary to prevent trespassers from remaining on the mortgaged property.

(iii) Preventing mosquito larvae from growing in standing water on the mortgaged property and infestations by other vermin and insects.

(iv) Taking other actions needed to prevent conditions on the mortgaged property that create a serious and imminent hazard to public health or safety.

Cross References. Section 2306 is referred to in section 2307 of this title.

§ 2307. Post-sheriff's sale possessory action, effect of certification of vacancy and abandonment in action for possession and disposition of abandoned personal property.

(a) Removal of personal property by former owner.--

(1) When a former owner relinquishes possession of mortgaged property certified as vacant and abandoned, the former owner shall remove from the mortgaged property all items of personal property.

(2) For the purposes of this section, a former owner shall be deemed to have relinquished possession when the former owner has:

- (i) physically vacated the premises;
- (ii) removed substantially all of the former owner's personal property; or
- (iii) provided a forwarding address or written notice stating that the former owner has vacated the premises or otherwise communicated to the creditor that the former owner has relinquished possession of the mortgaged property.

(b) Removal of personal property by purchaser.--If the former owner fails to remove personal property from mortgaged property certified as vacant and abandoned after delivery of a sheriff's deed or a deed in lieu of foreclosure, concurrent with the filing of an action for possession or at any time after the action is filed, the purchaser may remove the remaining personal property of the former owner in the following manner:

(1) The purchaser shall serve notice of intent to remove personal property from the mortgaged property on the owner in the manner provided under section 2306(b) (relating to effect of certification of vacancy and abandonment).

(2) The purchaser shall conspicuously post on the property a personal property removal notice that includes:

- (i) the date the notice was posted;
- (ii) the address of the mortgaged property;
- (iii) the date of the sheriff's sale or the date the title was acquired by the purchaser;
- (iv) a notice that personal property that remains on the mortgaged property must be retrieved by the former owner;

(v) a statement that:

(A) The former owner has 10 days from the date of the notice to notify the purchaser that the former owner will be retrieving the personal property.

(B) If the intent to retrieve is conveyed to the purchaser, the personal property shall be retained by the purchaser at the mortgaged property or a site of the purchaser's choosing for 30 days from the date of the notice.

(C) If no communication is made to the purchaser within 10 days, the personal property may be disposed of at the discretion of the purchaser; and

(vi) a telephone number, e-mail address or facsimile number and address for the purchaser or its agent and the location where the personal property can be retrieved, if not at the mortgaged property, and a statement that retrieval of the personal property after 10 days will require the former owner to pay for costs related to the storage of the personal property.

(3) At all times between posting of the personal property removal notice and the expiration of the 10-day period, the purchaser shall exercise ordinary care with regard to any personal property that the former owner left in or on the mortgaged property.

(4) At the expiration of the 10-day period, the purchaser shall owe no duty to the former owner with regard to caring for the personal property and may, in the purchaser's discretion, dispose of the personal property subject to the following:

- (i) If the personal property is sold and proceeds exceed any outstanding obligations owed to the owner or

obligor, the proceeds shall be forwarded to the former owner by certified mail.

(ii) If no forwarding address has been provided to the purchaser by the former owner, the owner shall hold the proceeds for 30 days and, if unclaimed, may retain the proceeds.

(5) If the purchaser has issued a personal property removal notice to the former owner, the purchaser may store the former owner's personal property at another location within reasonable proximity to the mortgaged property subject to the following:

(i) If the purchaser stores the personal property at another location, the purchaser may remove the personal property from the mortgaged property by any means reasonably calculated to safeguard the personal property for the time period required under this section.

(ii) A former owner shall not be required to pay the costs related to the removal or storage of personal property by the purchaser if the former owner retrieves the personal property within 10 days of the date of the notice.

(6) If the former owner or occupant retrieves the personal property after 10 days of the date of the notice but before 30 days, the former owner shall pay any reasonable and actual costs related to the removal or storage of the personal property by the purchaser for that time period.

§ 2308. Construction.

Nothing in this subchapter shall be construed to limit or restrict in any manner remedies available at law or in equity to a creditor or purchaser in a proceeding.

SUBCHAPTER B
SHERIFF'S COMMISSION AND CREDITOR
ATTORNEY FEES

Sec.

2309. (Reserved).

2310. Sheriff's commission.

2311. Limitation on creditor's attorney fees.

2312. Applicability.

§ 2309. (Reserved).

§ 2310. Sheriff's commission.

(a) **Timing of payment.**--With respect to a mortgaged property, the commission payable to the sheriff provided under section 4(b) of the act of July 6, 1984 (P.L.614, No.127), known as the Sheriff Fee Act, shall not be due unless the mortgaged property is sold at the execution sale conducted by the sheriff.

(b) **Stay, cancellation, withdrawal or postponement of sale.**--If the execution sale of a mortgaged property is stayed, canceled, withdrawn or postponed due to bankruptcy, because the mortgage is decelerated and brought current, in whole or in part, is paid in full or as a result of a loan modification of the mortgage loan or other resolution of the foreclosure action or for another reason, the sheriff shall not be entitled to the commission.

Cross References. Section 2310 is referred to in section 2312 of this title.

§ 2311. Limitation on creditor's attorney fees.

(a) **After commencement of proceedings.**--

(1) After the commencement of foreclosure or other legal action with respect to a residential mortgage that is subject to the limits on attorney fees provided under section 406 of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, attorney fees that are reasonable and actually incurred by the residential mortgage lender may be charged to the residential mortgage debtor.

(2) Attorney fees are presumed to be reasonable under paragraph (1) if they:

(i) conform with the attorney fees promulgated and as may be amended from time to time by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Department of Veterans Affairs or their respective successor organizations; and

(ii) are actually incurred for the enforcement of a mortgage obligation in this Commonwealth.

(3) A party to the action may request, upon application to the court, a review of the reasonableness of the attorney fees claimed.

(b) Before commencement of proceedings.--

(1) Except as provided in paragraph (2), prior to the commencement of foreclosure or other legal action with respect to a residential mortgage that is subject to the limits on attorney fees provided under section 406 of the Loan Interest and Protection Law, attorney fees that are reasonable and actually incurred not in excess of 0.1% of the amount of the then existing base figure as defined in section 101 of the Loan Interest and Protection Law may be charged to the residential mortgage debtor.

(2) No attorney fees may be charged for legal expenses incurred for a residential mortgage prior to or during the 30-day notice period provided under section 406 of the Loan Interest and Protection Law.

Cross References. Section 2311 is referred to in section 2312 of this title.

§ 2312. Applicability.

This subchapter shall apply to the extent provided under sections 2310 (relating to sheriff's commission) and 2311 (relating to limitation on creditor's attorney fees) and shall not be limited to mortgaged properties certified as vacant and abandoned under Subchapter A (relating to vacant and abandoned property).

SUBPART B
CONDOMINIUMS

Chapter

- 31. General Provisions
- 32. Creation, Alteration and Termination of Condominiums
- 33. Management of the Condominium
- 34. Protection of Purchasers

Special Provisions in Appendix. See section 8 of Act 168 of 1992 in the appendix to this title for special provisions relating to applicability of amendments.

GENERAL PROVISIONS

Sec.

- 3101. Short title of subpart.
- 3102. Applicability of subpart.
- 3103. Definitions.
- 3104. Variation by agreement.
- 3105. Separate titles and taxation.
- 3106. Applicability of local ordinances, regulations and building codes.
- 3107. Eminent domain.
- 3108. Supplemental general principles of law.
- 3109. Construction against implicit repeal.
- 3110. Uniformity of application and construction.
- 3111. Unconscionable agreement or term of contract.
- 3112. Obligation of good faith.
- 3113. Remedies to be liberally administered.

Enactment. Chapter 31 was added July 2, 1980, P.L.286, No.82, effective in 120 days.

§ 3101. Short title of subpart.

This subpart shall be known and may be cited as the "Uniform Condominium Act."

§ 3102. Applicability of subpart.

(a) General rule.--This subpart applies to all condominiums created within this Commonwealth after the effective date of this subpart. Subsection (b) and sections 3105 (relating to separate titles and taxation), 3106 (relating to applicability of local ordinances, regulations and building codes), 3107 (relating to eminent domain), 3203 (relating to construction and validity of declaration and bylaws), 3204 (relating to description of units), 3222 (relating to master associations), 3223 (relating to merger or consolidation of condominiums), 3302(a)(1) through (6), (9) and (11) through (16) (relating to powers of unit owners' association), 3311 (relating to tort and contract liability), 3315 (relating to lien for assessments), 3316 (relating to association records), 3407 (relating to resales of units) and 3412 (relating to effect of violations on rights of action), and section 3103 (relating to definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this Commonwealth before the effective date of this subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate existing provisions of the declaration, code of regulations or declaration plan of those condominiums.

(a.1) Retroactivity.--

(1) Sections 3103 (relating to definitions), 3108 (relating to supplemental general principles of law), 3112 (relating to obligation of good faith), 3219 (relating to amendment of declaration), 3220(i) (relating to termination of condominium), 3302(a)(8)(i), (16) and (17) (relating to powers of unit owners' association), 3303(a) and (b) (relating to executive board members and officers), 3307 (relating to upkeep of condominium), 3314 (relating to assessments for common expenses) and 3319 (relating to other liens affecting the condominium), to the extent necessary in construing any of those sections, shall apply to all condominiums created in this Commonwealth before the effective date of this subsection, but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate

existing provisions of the declaration, code of regulations, bylaws or declaration plan of those condominiums.

(2) Section 3303(c) and (d), to the extent necessary in construing any of those subsections, applies to all condominiums created in this Commonwealth before the effective date of this subpart, but those subsections apply only with respect to events and circumstances occurring 180 days after the effective date of this subsection and do not invalidate existing provisions of the declaration, code of regulations or declaration plan of those condominiums.

(b) Prior statutory law.--The provisions of the act of July 3, 1963 (P.L.196, No.117), known as the Unit Property Act, do not apply to condominiums created after the effective date of this subpart and do not invalidate any amendment to the declaration, code of regulations or declaration plan of any condominium created before the effective date of this subpart if the amendment would be permitted by this subpart. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by the provisions of the Unit Property Act. If the amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person. By amendment to the declaration, code of regulations and declaration plan, a condominium created pursuant to the Unit Property Act may be made subject to all of the provisions of this subpart in lieu of the provisions of the Unit Property Act, effective as of the date of recordation of such amendments and without in any way terminating the condominium status of the property or in any way affecting any lien or encumbrance on the property, if the terms of such amended documents conform to the requirements of this subpart and if such amendments have been approved by 67% of the persons whose actions would have been required to effect a removal of the property from the Unit Property Act pursuant to section 601 thereof. No amendment of:

(1) the declaration, code of regulations or declaration plan of a condominium created pursuant to the Unit Property Act; or

(2) the declaration, bylaws or plats and plans of a condominium created pursuant to this subpart; may increase the obligations or responsibilities of a declarant (as such and not as a unit owner) without the joinder of the declarant in such amendment.

(c) Condominiums outside Commonwealth.--This subpart does not apply to condominiums or units located outside this Commonwealth, but the public offering statement provisions (sections 3402 through 3405) apply to all dispositions thereof in this Commonwealth unless exempt under section 3401(b)(5) (relating to applicability; waiver).

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days; July 4, 2008, P.L.619, No.49, eff. imd.)

2008 Amendment. Act 49 amended subsec. (b).

2004 Amendment. Act 191 added subsec. (a.1).

§ 3103. Definitions.

The following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless specifically provided otherwise or unless the context clearly indicates otherwise:

"Additional real estate." Real estate that may be added to a flexible condominium.

"Affiliate of a declarant." Any person who controls, is controlled by, or is under common control with a declarant.

(1) A person "controls" a declarant if the person:

(i) is a general partner, officer, director or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20% of the voting interests of the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20% of the capital of the declarant.

(2) A person "is controlled by" a declarant if the declarant:

(i) is a general partner, officer, director or employee of the person;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20% of the voting interests of the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(3) Control does not exist if the powers described in paragraphs (1) and (2) are held solely as security for an obligation and are not exercised.

"Alternative dispute resolution." A procedure for settling a dispute by means other than litigation, such as arbitration or mediation.

"Association" or "unit owners' association." The unit owners' association organized under section 3301 (relating to organization of unit owners' association).

"Common elements." All portions of a condominium other than the units.

"Common expenses." Expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves, including general common expenses and limited common expenses.

"Common expense liability." The liability for common expenses allocated to each unit pursuant to section 3208 (relating to allocation of common element interests, votes and common expense liabilities).

"Condominium." Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

"Conversion building." A building that, at any time before the conversion notice date with respect to the condominium in which the building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Conversion notice." The notice required to be given to tenants or subtenants by the terms of section 3410(a) (relating to condominiums containing conversion buildings).

"Conversion notice date." The date on which the conversion notice is placed in the United States mail, in the case of

mailed notices, or delivered to the unit leased by the recipient, in the case of hand-delivered notices.

"Convertible real estate." A portion of a flexible condominium not within a building containing a unit, within which additional units or limited common elements, or both, may be created.

"Declarant."

(1) If the condominium has been created, "declarant" means:

(i) any person who has executed a declaration, or an amendment to a declaration to add additional real estate, other than persons holding interests in the real estate solely as security for an obligation, persons whose interests in the real estate will not be conveyed to unit owners, or, in the case of a leasehold condominium, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights; or

(ii) any person who succeeds under section 3304 (relating to transfer of special declarant rights) to any special declarant rights.

(2) If the condominium has not yet been created, "declarant" means any person who offers to dispose of or disposes of his interest in a unit to be created and not previously disposed of.

(3) If a declaration is executed by a trustee of a land trust, "declarant" means the beneficiary of the trust.

"Dispose" or "disposition." A voluntary transfer of any legal or equitable interest in a unit or a proposed unit, other than as security for an obligation.

"Executive board." The body, regardless of name, designated in the declaration to act on behalf of the association.

"Flexible condominium." A condominium containing withdrawable or convertible real estate, a condominium to which additional real estate may be added, or a combination thereof.

"Identifying number." A symbol that identifies only one unit in a condominium.

"Immediate family." A parent, spouse, child, brother or sister.

"Independent reviewer." A person who is selected by the executive board of a condominium and satisfies all of the following:

(1) Holds a certificate issued by the Commonwealth as a certified public accountant, is licensed to practice law in this Commonwealth or is a vote management system.

(2) Is not a unit owner, directly or indirectly.

(3) Has no immediate family relationship with the declarant, a unit owner or the condominium manager.

(4) Has no financial interest shared with the declarant, a unit owner or the condominium manager.

(5) If compensated by the declarant, a director, the association or the condominium manager, has disclosed the terms of the compensation to all unit owners at a scheduled meeting.

"Installment sales contract." An executory contract for the purchase and sale of a unit or interest in a unit whereby the purchaser is obligated to make six or more installment payments to the seller after the execution of the contract and before the time appointed for the conveyance of title to the unit or interest in the unit.

"Leasehold condominium." A condominium in which all or a portion of the real estate is subject to a lease the expiration

or termination of which will terminate the condominium or reduce its size.

"Limited common element." A portion of the common elements allocated by or pursuant to the declaration or by operation of section 3202(2) or (4) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"Limited common expenses." All expenses identified as such pursuant to section 3314(c) (relating to assessments for common expenses).

"Master association." An organization described in section 3222 (relating to master associations), whether or not it is an association described in section 3301 (relating to organization of unit owners' association).

"Offer" or "offering." Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this Commonwealth, is not an offer or offering if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

"Original lease termination date." The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of such lease or sublease, after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date.

"Person." A natural person, corporation, partnership, association, trust, other entity or any combination thereof.

"Purchaser." Any person, other than a declarant, who by means of a disposition acquires a legal or equitable interest in a unit, other than:

- (1) a leasehold interest (including renewal options) of less than 20 years, but a person who will become a unit owner in a leasehold condominium upon consummation of the disposition shall be deemed to be a purchaser; or
- (2) as security for an obligation.

"Real estate." Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential tenant" or "residential subtenant." A tenant or subtenant, respectively, who is a natural person lawfully occupying real estate for residential use.

"Special declarant rights." Rights reserved for the benefit of a declarant to:

- (1) Complete improvements indicated on plats and plans filed with the declaration (section 3210).
- (2) Convert convertible real estate in a flexible condominium (section 3211).
- (3) Add additional real estate to a flexible condominium (section 3211).
- (4) Withdraw withdrawable real estate from a flexible condominium (section 3212).
- (5) Convert a unit into two or more units, common elements, or into two or more units and common elements (section 3215).
- (6) Maintain offices, signs and models (section 3217).

(7) Use easements through the common elements for the purpose of making improvements within the condominium or within any convertible or additional real estate (section 3218).

(8) Cause the condominium to be merged or consolidated with another condominium (section 3223).

(9) Make the condominium subject to a master association (section 3222).

(10) Appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (section 3303(c)).

"Unit." A portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to section 3205(4) (relating to contents of declaration; all condominiums).

"Unit owner." A declarant who owns a unit, a person to whom ownership of a unit has been conveyed, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium. "Unit owner" does not include a person having an interest in a unit solely as security for an obligation.

"Unit owner in good standing." A unit owner who is current in payment of assessments and fines, unless the assessments or fines are directly related to a complaint filed with the Bureau of Consumer Protection in the Office of Attorney General regarding section 3308 (relating to meetings), 3309 (relating to quorums), 3310 (relating to voting; proxies) or 3316 (relating to association records).

"Vote management system." A third-party vendor who operates a digital or subscription service that securely manages the conduct of elections and voting procedures.

"Withdrawable real estate." Real estate that may be withdrawn from a flexible condominium.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; May 4, 2018, P.L.96, No.17, eff. 60 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added the defs. of "immediate family," "independent reviewer" and "vote management system."

2018 Amendment. Act 17 added the defs. of "alternative dispute resolution" and "unit owner in good standing."

1992 Amendment. Act 168 amended the defs. of "affiliate of a declarant," "common expenses," "conversion condominium," "declarant," "dispose" or "disposition," "limited common element," "offering," "purchaser" and "special declarant rights" and added the defs. of "conversion notice," "conversion notice date," "limited common expenses," "master association," "original lease termination date" and "residential tenant" or "residential subtenant."

Cross References. Section 3103 is referred to in sections 3102, 3304, 7402 of this title; section 8401 of Title 53 (Municipalities Generally).

§ 3104. Variation by agreement.

Except as expressly provided in this subpart, provisions of this subpart may not be varied by agreement and rights conferred by this subpart may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this subpart or the declaration.

§ 3105. Separate titles and taxation.

(a) Title.--Except as provided in subsection (b), each unit together with its common element interest constitutes for all purposes a separate parcel of real estate.

(b) Taxation and assessment.--If there is a unit owner other than a declarant, each unit together with its common element interest, but excluding its common element interest in convertible or withdrawable real estate, shall be separately taxed and assessed, and each portion of any convertible or withdrawable real estate shall be separately taxed and assessed; otherwise, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

Cross References. Section 3105 is referred to in section 3102 of this title.

§ 3106. Applicability of local ordinances, regulations and building codes.

(a) General rule.--A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership.

(b) Current law unaffected.--Except as provided in subsection (a), no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, land development, building code or other real estate use law, ordinance or regulation.

(c) Status.--The creation of a condominium pursuant to section 3201 (relating to creation of condominium) out of an entire lot, parcel or tract of real estate which has previously received approval for land development or subdivision, as those terms are defined in section 107 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or the conveyance of units in the condominium, shall not, in and of itself, constitute a subdivision or land development, for the purposes of subdivision, land development or other laws, ordinances and regulations.

(d) Compliance with zoning regulations.--

(1) Use of the condominium shall comply with zoning regulations applicable to the parcel of land or tract of real estate on which the condominium is created.

(2) Any person creating a condominium out of a vacant parcel or tract of real estate which has not been subject to subdivision or land development approval shall submit a copy of the condominium declaration and condominium plan to all municipalities in which the parcel or tract of real estate is located, unless the creation of the condominium is for an estate planning purpose of conveying units to family members or an entity controlled by family members so that the conveyance would not be subject to realty transfer taxes pursuant to Article XI-C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(3) Construction of any structure or building on any unit or common facility shall be subject to the provisions of any zoning, subdivision, land development, building code or other real estate law, ordinance or regulation.

(July 10, 2015, P.L.168, No.38, eff. 60 days)

Cross References. Section 3106 is referred to in section 3102 of this title.

§ 3107. Eminent domain.

(a) General rule.--If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its common element interest, whether or not any common element interest is acquired. Upon acquisition, unless the decree otherwise provides, that unit's entire common element interest, votes in the association and common expense liability are automatically reallocated to the remaining units in proportion to the respective interests, votes and liabilities of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Acquisition of part of a unit.--Except as provided in subsection (a), if part of a unit is acquired by eminent domain the award must compensate the unit owner for the reduction in value of the unit and its common element interest. Upon acquisition:

(1) that unit's common element interest, votes in the association and common expense liability are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(2) the portion of common element interest, votes and common expense liability divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective interests, votes and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced interest, votes and liabilities.

(c) Acquisition of part of common elements.--If part of the common elements is acquired by eminent domain, the award must be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

Cross References. Section 3107 is referred to in sections 3102, 3207, 3208, 3219, 3220, 3312 of this title.

§ 3108. Supplemental general principles of law.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance or other validating or invalidating cause supplement the provisions of this subpart except to the extent inconsistent with this subpart.

Cross References. Section 3108 is referred to in section 3102 of this title.

§ 3109. Construction against implicit repeal.

This subpart being a general statute intended as a unified coverage of its subject matter, no part of it shall be construed

to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 3110. Uniformity of application and construction.

This subpart shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart among states enacting it.

§ 3111. Unconscionable agreement or term of contract.

(a) **Powers of court.**--The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may:

- (1) refuse to enforce the contract;
- (2) enforce the remainder of the contract without the unconscionable clause; or
- (3) limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) **Parties may present evidence.**--Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

- (1) The commercial setting of the negotiations.
- (2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors.
- (3) The effect and purpose of the contract or clause.
- (4) If a sale, any gross disparity at the time of contracting between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§ 3112. Obligation of good faith.

Every contract or duty governed by this subpart imposes an obligation of good faith in its performance or enforcement.

Cross References. Section 3112 is referred to in section 3102 of this title.

§ 3113. Remedies to be liberally administered.

(a) **General rule.**--The remedies provided by this subpart shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this subpart or by other rule of law.

(b) **Judicial enforcement of rights and obligations.**--Any right or obligation declared by this subpart is enforceable by judicial proceeding.

CHAPTER 32
CREATION, ALTERATION AND TERMINATION
OF CONDOMINIUMS

Sec.

3201. Creation of condominium.

3202. Unit boundaries.

- 3203. Construction and validity of declaration and bylaws.
- 3204. Description of units.
- 3205. Contents of declaration; all condominiums.
- 3206. Contents of declaration; flexible condominiums.
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- 3210. Plats and plans.
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- 3212. Withdrawal of withdrawable real estate.
- 3213. Alterations of units.
- 3214. Relocation of boundaries between adjoining units.
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- 3218. Easement to facilitate completion, conversion and expansion.
- 3219. Amendment of declaration.
- 3220. Termination of condominium.
- 3221. Rights of secured lenders.
- 3222. Master associations.
- 3223. Merger or consolidation of condominiums.

Enactment. Chapter 32 was added July 2, 1980, P.L.286, No.82, effective in 120 days.

§ 3201. Creation of condominium.

A condominium may be created pursuant to this subpart only by recording a declaration executed, in the same manner as a deed, by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size, provided, however, in any such lease wherein the lessor is the Commonwealth of Pennsylvania, a municipal government or any agency thereof, said lessor need not execute the declaration if they shall have previously given written consent to its filing and agreed to be bound by the provisions of the Pennsylvania Uniform Condominium Act, in which case said declaration shall be executed by the lessee then in possession of the subject property. The declaration shall be recorded in every county in which any portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed against each declarant as the grantor and the name of the condominium as the grantee.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3201 is referred to in section 3106 of this title.

§ 3202. Unit boundaries.

Except as provided by the declaration:

(1) If walls, floor or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited

common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Cross References. Section 3202 is referred to in sections 3103, 3209, 3210, 3302 of this title.

§ 3203. Construction and validity of declaration and bylaws.

(a) **Provisions severable.**--All provisions of the declaration and bylaws are severable.

(b) **Application of rule against perpetuities.**--The rule against perpetuities may not be applied to defeat any provision of the declaration or this subpart, or any instrument executed pursuant to the declaration or this subpart.

(c) **Conflict between declaration and bylaws.**--In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this subpart.

(d) **Effect of noncompliance on title to unit.**--Title to a unit and its common element interest is not rendered unmarketable or otherwise affected by any provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this subpart.

Cross References. Section 3203 is referred to in section 3102 of this title.

§ 3204. Description of units.

After the declaration is recorded, a description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or counties in which the condominium is located and the identifying number of the unit is a sufficient legal description of that unit and its common element interest even if the common element interest is not described or referred to therein. Deeds, leases and mortgages of units shall be recorded in the same records as are maintained by the recorder for the recording of like instruments and shall be indexed by the recorder in the same manner as like instruments are indexed.

Cross References. Section 3204 is referred to in section 3102 of this title.

§ 3205. Contents of declaration; all condominiums.

The declaration for a condominium must contain:

(1) The name of the condominium which must include the word "condominium" or be followed by the words "a condominium."

(2) The name of every county in which any part of the condominium is situated.

(3) A legally sufficient description of the real estate included in the condominium.

(4) A description or delineation of the boundaries of each unit including the unit's identifying number.

(5) A statement of the maximum number of units that may be created by the subdivision or conversion of units owned

by the declarant pursuant to section 3215(c) (relating to subdivision or conversion of units).

(6) A description of any limited common elements as provided in section 3209 (relating to limited common elements) and limited common expenses, if any, and how they are to be assessed.

(7) A description of any common elements not within the boundaries of any convertible real estate which may be allocated subsequently as limited common elements together with a statement that they may be so allocated and a description of the method by which the allocations are to be made.

(8) An allocation to each unit of an undivided interest in the common elements, a portion of the votes in the association and a percentage or fraction of the common expenses of the association (section 3208).

(9) Any restrictions created by the declarant on use, occupancy and alienation of the units.

(10) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject.

(11) If all or any of the units are or may be owned in time-share estates as defined in section 3403(a) (relating to public offering statement; time-share estates), which units may be owned in time-share estates and the maximum number of time-share estates that may be created in the condominium, it being intended that time-share estates shall not be permitted except if and to the extent expressly authorized by the declaration.

(12) If the declarant wishes to retain the special declarant right to cause section 3222 (relating to master associations) to become applicable to a condominium, then:

(i) an explicit reservation of such right;

(ii) a statement of the time limit upon which the option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal; and

(iii) the information required to be included in the declaration by the provisions of section 3222.

(13) If the declarant wishes to retain the special declarant right to merge or consolidate the condominium pursuant to section 3223 (relating to merger or consolidation of condominiums), then:

(i) an explicit reservation of such right;

(ii) a statement of the time limit upon which any option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will

terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the Pennsylvania Municipalities Planning Code or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal;

(iii) a statement of the name and location of each other condominium that may be subject to such a merger or consolidation if such other condominiums exist and if such other condominiums do not exist, then the declaration shall include the following:

(A) A statement of the extent to which the common element interest, relative voting strength in the association and share of common expense liability of each unit in the condominium at the time the merger or consolidation is effectuated may be increased or decreased by actions pursuant to any option reserved under subparagraph (i), including the formulas to be used for those reallocations.

(B) Legally sufficient descriptions of each portion of real estate which is part of any other condominiums which may be created and with which the condominium may merge or consolidate.

(C) If mergers or consolidations may be effectuated at different times, a statement to that effect together with:

(I) either a statement fixing the boundaries of those condominiums and regulating the order in which they may be merged or consolidated or a statement that no assurances are made in those regards; and

(II) a statement as to whether, if any other condominiums are merged or consolidated with the condominium, all or any of such condominiums must be merged or consolidated.

(D) A statement of:

(I) the maximum number of units that may be created within any such other condominiums, the boundaries of which are fixed pursuant to clause (C);

(II) how many of those units will be restricted exclusively to residential use; and

(III) the maximum number of units per acre that may be created within any such other condominiums, the boundaries of which are not fixed pursuant to clause (C).

(E) If any of the units that may be built within any such other condominiums are not to be restricted exclusively to residential use, a statement with respect to each portion of such other condominiums of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use.

(F) A statement of the extent to which any buildings and units that may be part of such other condominiums will be compatible with the other buildings and units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(G) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any such other condominiums or a statement of any differentiations that may be made as to those units.

(H) General descriptions of all other improvements and limited common elements that may be made or created within such other condominiums or a statement that no assurances are made in that regard.

(I) A statement of any limitations as to the locations of any buildings or other improvements that may be made within such other condominiums or a statement that no assurances are made in that regard.

(J) A statement that any limited common elements created within any such other condominiums will be of the same general types and sizes as those within the condominium or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(K) A statement that the proportion of limited common elements to units created within such other condominiums will be approximately equal to the proportion existing within the condominium or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(L) A statement of the extent to which any assurances made in the declaration regarding such other condominiums pursuant to clauses (C) through (K) apply in the event any such condominiums are not merged or consolidated with the condominium or a statement that those assurances do not apply if the condominiums are not merged or consolidated with the condominium; and

(iv) a summary description of the other provisions which materially change any rights, obligations or liabilities that will be included in the agreement of merger or consolidation if such right is exercised.

(13.1) If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be

required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.

(13.2) Any fees or charges to be paid by unit owners, currently or in the future, for the use of the common elements, limited common elements and any other facility related to the condominium.

(14) Any other matters the declarant deems appropriate. (Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; July 2, 2013, P.L.204, No.37, eff. imd.; Oct. 19, 2018, P.L.551, No.84, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 added par. (13.2).

2018 Amendment. Act 84 added par. (13.1).

2013 Amendment. Act 37 amended pars. (12) and (13)(ii) and carried without amendment par. (13)(i). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3205 is referred to in sections 3103, 3206, 3209, 3211, 3219, 3222, 3223, 3407, 3414 of this title.

§ 3206. Contents of declaration; flexible condominiums.

The declaration for a flexible condominium shall include, in addition to the matters specified in section 3205 (relating to contents of declaration; all condominiums):

(1) An explicit reservation of any options to create units, limited common elements, or both, within convertible real estate or to add additional real estate to or withdraw withdrawable real estate from the condominium.

(2) A statement of the time limit upon which any option reserved under paragraph (1) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(i) ten years after the recording of the declaration; or

(ii) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal.

(3) A statement of any limitations on any option reserved under paragraph (1), other than limitations created by or imposed pursuant to law, or else a statement that there are no such limitations.

(4) A statement of the extent to which the common element interest, relative voting strength in the association and share of common expense liability of each unit in the condominium at the time the declaration is recorded may be increased or decreased by actions pursuant to any option reserved under paragraph (1) including the formulas to be used for those reallocations.

(5) Legally sufficient descriptions of each portion of convertible, additional and withdrawable real estate.

(6) If portions of any convertible, additional or withdrawable real estate may be converted, added or withdrawn at different times, a statement to that effect together with:

(i) either a statement fixing the boundaries of those portions and regulating the order in which they may be converted, added or withdrawn or a statement that no assurances are made in those regards: and

(ii) a statement as to whether, if any portion of convertible, additional or withdrawable real estate is converted, added or withdrawn, all or any particular portion of that or any other real estate must be converted, added or withdrawn.

(7) A statement of:

(i) the maximum number of units that may be created within any additional or convertible real estate, or within any portion of either, the boundaries of which are fixed pursuant to paragraph (6);

(ii) how many of those units will be restricted exclusively to residential use; and

(iii) the maximum number of units per acre that may be created within any portions the boundaries of which are not fixed pursuant to paragraph (6).

(8) If any of the units that may be built within any additional or convertible real estate are not to be restricted exclusively to residential use, a statement with respect to each portion of the additional and convertible real estate of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use.

(9) A statement of the extent to which any buildings and units that may be erected upon each portion of the additional or convertible real estate will be compatible with the other buildings and units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction and size, or a statement that no assurances are made in those regards.

(10) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any convertible or additional real estate, or a statement of any differentiations that may be made as to those units.

(11) General descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the additional or convertible real estate, or a statement that no assurances are made in that regard.

(12) A statement of any limitations as to the locations of any buildings or other improvements that may be made within convertible or additional real estate, or a statement that no assurances are made in that regard.

(13) A statement that any limited common elements created within any convertible or additional real estate will be of the same general types and sizes as those within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard.

(14) A statement that the proportion of limited common elements to units created within convertible or additional real estate will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard.

(15) A statement of the extent to which any assurances made in the declaration regarding additional or withdrawable

real estate pursuant to paragraphs (6) through (14) apply in the event any additional real estate is not added to or any withdrawable land is withdrawn from the condominium, or a statement that those assurances do not apply if the real estate is not added to or is withdrawn from the condominium. (July 2, 2013, P.L.204, No.37, eff. imd.)

2013 Amendment. Act 37 amended par. (2). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3206 is referred to in sections 3211, 3212, 3219, 3402 of this title.

§ 3207. Leasehold condominiums.

(a) Recording lease and contents of declaration.--Any lease the expiration or termination of which may terminate the condominium or reduce its size shall be recorded and the declaration shall state:

- (1) The recording data for the lease.
- (2) The date on which the lease is scheduled to expire.
- (3) A legally sufficient description of the real estate subject to the lease.
- (4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights.
- (5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights.
- (6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) Limitation on termination of leasehold interest.--After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Merger of leasehold and fee simple interests.--Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) Reallocation of interests if number of units reduced.--If the expiration or termination of a lease decreases the number of units in a condominium, the common element interests, votes in the association and common expense liabilities shall be reallocated in accordance with section 3107 (relating to eminent domain) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

Cross References. Section 3207 is referred to in sections 3219, 3402 of this title.

§ 3208. Allocation of common element interests, votes and common expense liabilities.

(a) General rule.--The declaration shall allocate a fraction or percentage of undivided interests in the common elements and

in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Such formulas may take into account unusual attributes of identified units if the formulas state how the deviation from the normal rule applies to such units.

(b) Flexible condominiums.--If units may be added to, including by conversion of convertible real estate to one or more units, or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the fractions or percentages of undivided interests in the common elements and in the common expenses of the association and the portions of the votes in the association among all units included in the condominium after the addition or withdrawal.

(c) Votes.--Each unit in the condominium shall be allocated one or more votes in the condominium association. The declaration shall specify how votes in the condominium shall be allocated among the units and may provide:

(1) for different allocations of votes among the units on particular matters specified in the declaration; and

(2) for class voting on specified issues affecting a particular class of units if necessary to protect the valid interests of the owners of such units and not affecting units outside of the class.

Cumulative voting shall only be permitted if so provided expressly in the declaration and only for the purpose of electing members of the executive board. A declarant may not utilize cumulative or class voting for the purpose of evading any limitations imposed upon declarants by this subpart. The declaration may provide that different allocations of votes shall be made to the units on particular matters specified in the declaration.

(d) Alteration or partition of allocations.--Except in the case of eminent domain (section 3107), expansion or conversion of a flexible condominium (section 3211), withdrawal of withdrawable real estate (section 3212), relocation of boundaries between adjoining units (section 3214) or subdivision of units (section 3215), the common element interest, votes and common expense liability allocated to any unit may not be altered without unanimous consent of all unit owners. The common elements are not subject to partition and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which it is allocated is void.

(e) Calculations for undivided interests.--Except for minor variations due to rounding, the sums of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100% if stated as percentages. In the event of discrepancy between the common element interest, votes or common expense liability allocated to a unit and the result derived from application of the formulas, the allocated common element interest, vote or common expense liability prevails.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3208 is referred to in sections 3103, 3205, 3311, 3314 of this title.

§ 3209. Limited common elements.

(a) Allocation.--Except for the limited common elements described in section 3202(2) and (4) (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated. That allocation

may not be altered without the consent of the unit owners whose units are affected.

(b) Reallocation.--Subject to any provisions of the declaration, a limited common element may be reallocated by a recorded assignment executed by the unit owners between or among whose units the reallocation is made, or by an amendment to the declaration executed by those unit owners. The persons executing the assignment or amendment to the declaration shall provide a copy thereof to the association.

(c) Common elements not previously allocated.--A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 3205(7) (relating to contents of declaration; all condominiums). The declaration may provide that the allocations shall be made by deeds or assignments executed by the declarant or the association, or by amendments to the declaration.

Cross References. Section 3209 is referred to in sections 3205, 3211, 3219 of this title.

§ 3210. Plats and plans.

(a) General rule.--Plats and plans are a part of the declaration. Separate plats and plans are not required by this subpart if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible. The plats and plans must contain, on the first page of the plats and plans, a certification that all of the plats and plans contain all information required by this section.

(b) Contents of plat.--Each plat must show:

- (1) The name, location and dimensions of the condominium.
- (2) The location and dimensions of all existing improvements.
- (3) The intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium labeled either "MUST BE BUILT" or "NEED NOT BE BUILT" but need not show contemplated improvements within the boundaries of convertible real estate.
- (4) The location and dimensions of any convertible real estate, labeled as such.
- (5) The location and dimensions of any withdrawable real estate, labeled as such.
- (6) The extent of any encroachments by or upon any portion of the condominium.
- (7) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium.
- (8) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit's identifying number.
- (9) The location with reference to established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit's identifying number.
- (10) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate."
- (11) The distance between noncontiguous parcels of real estate comprising the condominium.
- (12) The location and dimensions of limited common elements, including porches, balconies and patios, other

than parking spaces and the other limited common elements described in section 3202(2) and (4) (relating to unit boundaries) not shown on plans recorded pursuant to subsection (c).

(13) All other matters customarily shown on land surveys.

(c) Contents of plan.--Plans of every building that contains or comprises all or part of any unit and is located or must be built within any portion of the condominium, other than within the boundaries of any convertible real estate, must show:

(1) The location and dimensions of the vertical boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, and that unit's identifying number.

(2) Any horizontal unit boundaries, with reference to established datum, not shown on plats recorded pursuant to subsection (b), and that unit's identifying number.

(3) Any units that may be converted by the declarant to create additional units or common elements (section 3215(c)), identified appropriately.

(4) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in section 3202(2) and (4) not shown on plats recorded pursuant to subsection (b).

(d) Horizontal boundaries of unit partly outside building.--Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(e) Converting or adding real estate.--Upon converting convertible real estate or adding additional real estate (section 3211), the declarant shall record new plats for that real estate conforming to the requirements of subsection (b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of the remaining portion.

(f) Converting units.--If a declarant converts any unit into two or more units, limited common elements, or both (section 3215), he shall record new plans showing the location and dimensions of any new units and limited common elements thus created as well as the location and dimensions of any portion of that space not being converted.

(g) Alternative recording.--Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record new certifications of plats and plans previously recorded if those plats and plans show all improvements required by subsections (e) and (f).

(h) Who may make certifications.--Any certification of a plat or plan required by this section must be made by an independent registered surveyor, architect or professional engineer.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days)

2004 Amendment. Act 191 amended subsec. (h).

Cross References. Section 3210 is referred to in sections 3103, 3211, 3219, 3413, 3414 of this title.

§ 3211. Conversion and expansion of flexible condominiums.

(a) General rule.--To convert convertible real estate or add additional real estate pursuant to an option reserved under section 3206(1) (relating to contents of declaration; flexible condominiums), the declarant shall prepare, execute and record an amendment to the declaration (section 3219) and comply with section 3210 (relating to plats and plans). The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate and reallocate common element interests, votes in the association and common expense liabilities. The amendment must describe or delineate any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 3209 (relating to limited common elements).

(b) Creations within additional real estate.--Convertible or withdrawable real estate may be created within any additional real estate added to the condominium if the amendment adding that real estate includes all matters required by section 3205 (relating to contents of declaration; all condominiums) or section 3206 (relating to contents of declaration; flexible condominiums), as the case may be, and the plat includes all matters required by section 3210(b) (relating to plats and plans). This provision does not extend the time limit on conversion or contraction of a flexible condominium imposed by the declaration pursuant to section 3206(2).

(c) Liability for expenses and right to income.--Until conversion occurs or the period during which conversion may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against convertible real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from convertible real estate inures to the declarant.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3211 is referred to in sections 3103, 3208, 3210, 3219, 3302, 3414 of this title.

§ 3212. Withdrawal of withdrawable real estate.

(a) General rule.--To withdraw withdrawable real estate from a flexible condominium pursuant to an option reserved under section 3206(1) (relating to contents of declaration; flexible condominiums), the declarant shall prepare, execute and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment must reallocate common element interests, votes in the association and common expense liabilities to the remaining units in the condominium in proportion to the respective interests, votes and liabilities of those units before the withdrawal, and the reallocation is effective when the amendment is recorded.

(b) When withdrawal prohibited.--If a portion of the withdrawable real estate was described pursuant to section 3206(6), that portion may not be withdrawn if any person other than the declarant owns a unit situated therein. If the portion was not so described, none of it is withdrawable if any person other than the declarant owns a unit situated therein.

(c) Liability for expenses and right to income.--Until withdrawal occurs or the period during which withdrawal may occur expires, whichever occurs first, the declarant alone is

liable for real estate taxes assessed against withdrawable real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from withdrawable real estate inures to the declarant.

Cross References. Section 3212 is referred to in sections 3103, 3208, 3219, 3414 of this title.

§ 3213. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.

(2) May not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without permission of the association.

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

§ 3214. Relocation of boundaries between adjoining units.

(a) **General rule.**--Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their common element interests, votes in the association and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them and, upon recordation, is indexed in the name of the grantor and the grantee.

(b) **Preparing and recording plats or plans.**--The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

Cross References. Section 3214 is referred to in sections 3208, 3219 of this title.

§ 3215. Subdivision or conversion of units.

(a) **General rule.**--If the declaration expressly so permits, a unit may be subdivided into two or more units or, in the case of a unit owned by a declarant, may be subdivided or converted into two or more units, common elements, or a combination of units and common elements. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit or upon application of a declarant to convert a unit the association shall prepare,

execute and record an amendment to the declaration, including the plats and plans, subdividing or converting that unit.

(b) Execution and contents of amendment.--The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created and reallocate the common element interest, votes in the association and common expense liability formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

(c) Conversion of unit of declarant to common elements.--In the case of a unit owned by a declarant, if a declarant converts all of a unit to common elements, the amendment to the declaration must reallocate among the other units the common element interest, votes in the association and common expense liability formerly allocated to the converted unit on a pro rata basis, inter se.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3215 is referred to in sections 3103, 3205, 3208, 3210, 3219 of this title.

§ 3216. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any contractor, subcontractor or materialman of liability for failure to adhere to the plats and plans.

§ 3217. Declarant's offices, models and signs.

(a) Common elements.--A declarant may maintain offices and models in the common element portion of the condominium only in connection with the management, sale or rental of units owned by the declarant in the condominium if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. At such time as a declarant ceases to be a unit owner, he ceases to have any rights with regard to such portions of the common elements so used unless such portions are removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Upon the relocation of a model or office constituting a common element, a declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed common elements, and any personal property not so removed shall be deemed the property of the association.

(b) Signs.--Subject to any limitations in the declaration, a declarant may maintain signs in his units and on the common elements advertising units in the condominium owned by the declarant for sale or lease.

(c) Units.--A declarant shall have the right to locate, relocate and maintain offices and models used only in connection with the management, sale or rental of units owned by the declarant in the condominium in his unit or units in the condominium, notwithstanding the fact that the declaration would otherwise preclude use of units for such purpose, but subject to all other provisions in the declaration, including, without limitation, modification or elimination of declarant's rights pursuant to this subsection by specific reference thereto.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3217 is referred to in sections 3103, 3304, 3414 of this title.

§ 3218. Easement to facilitate completion, conversion and expansion.

(1) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, however arising.

(2) Without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during spring thaw conditions to restrict usage by vehicles of more than ten tons gross weight if:

(i) the restrictions are imposed only on a week-by-week basis for an aggregate period not to exceed eight weeks during any calendar year;

(ii) the thaw conditions are reviewed by the association at least weekly; and

(iii) signs are conspicuously posted by the association at all entrances to the condominium advising when and where the thaw restrictions are applicable.

(3) An association shall not have the power to impose any fees or charges or required financial security, including surety bonds, letters of credit or escrow deposits for the use of the easement rights under this section except for the repair of damage caused to common elements in the exercise of the easement rights.

(4) The declarant or owner who exercises the easement rights under this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements so damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, P.L.1509, No.191, eff. 60 days)

Cross References. Section 3218 is referred to in sections 3103, 3414 of this title.

§ 3219. Amendment of declaration.

(a) Number of votes required.--

(1) The declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least:

(i) sixty-seven percent of the votes in the association are allocated;

(ii) any larger majority the declaration specifies; or

(iii) a smaller number as specified in the declaration if all of the units are restricted exclusively to nonresidential use.

(2) Paragraph (1) is limited by subsection (d) and section 3221 (relating to rights of secured lenders).

(3) Paragraph (1) shall not apply to any of the following:

(i) Amendments executed by a declarant under:
(A) section 3210(e) and (f) (relating to plats and plans);

(B) section 3211(a) (relating to conversion and expansion of flexible condominiums); or

(C) section 3212(a) (relating to withdrawal of withdrawable real estate).

(ii) Amendments executed by the association under:

(A) subsection (f);

(B) section 3107 (relating to eminent domain);

(C) section 3207(d) (relating to leasehold condominiums);

(D) section 3209(c) (relating to limited common elements); or

(E) 3215(a) (relating to subdivision or conversion of units).

(iii) Amendments executed by certain unit owners under:

(A) section 3209(b);

(B) section 3214(a) (relating to relocation of boundaries between adjoining units);

(C) section 3215(b); or

(D) section 3220(b) (relating to termination of condominium).

(iv) Amendments executed by a declarant which conform the maximum time limit for exercising declarant options to the time limit authorized by sections 3205(12) and (13) (relating to contents of declaration; all condominiums) and 3206(2) (relating to contents of declaration; flexible condominiums).

(b) Limitation of action to challenge amendment.--No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Recording amendment.--The following shall apply:

(1) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the condominium in both the grantor and grantee index. An amendment is effective only upon recordation.

(2) Except for counties which do not maintain a uniform parcel identifier number system of indexing, all counties shall assign a master parcel number to each condominium, and every amendment to the declaration shall be indexed against the master parcel. If required by the county, an amendment may be indexed against a parcel assigned to each unit within the condominium, but no fees shall be charged to each unit unless the indexing against each parcel is requested by the declarant or association.

(3) The provisions of this subsection shall control over any conflicting provisions in any other statute, regulation or ordinance.

(d) When unanimous consent required.--

(1) Except to the extent expressly permitted or required by other provisions of this subpart, no amendment may create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the common

element interest, common expense liability or voting strength in the association allocated to a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(2) As used in this subsection, the term "uses to which any unit is restricted" shall not include leasing of units.

(e) Officer authorized to execute amendment.--Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) Corrective amendments.--Except as otherwise provided in the declaration, if any amendment to the declaration is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision thereof or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in condominium projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the condominium or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents, tenants or employees, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the unit owners or the holders of any liens on all or any part of the condominium, upon receipt by the executive board of an opinion from legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.; Apr. 20, 2016, P.L.156, No.21, eff. 60 days; Nov. 4, 2016, P.L.1214, No.162, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 amended subsec. (f).

2016 Amendments. Act 21 amended subsec. (d) and Act 162 amended subsec. (c).

2013 Amendment. Act 37 amended subsec. (a). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3219 is referred to in sections 3102, 3211, 3303 of this title.

§ 3220. Termination of condominium.

(a) Number of votes required.--Except in the case of a taking of all the units by eminent domain (section 3107), a condominium may be terminated only by agreement of unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(b) Execution and recording agreement and ratifications.--An agreement of unit owners to terminate a condominium must be evidenced by their execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners who are owners of record as of the date preceding the date of recordation of the termination agreement. The termination agreement must specify the date it was first executed or ratified by a unit owner. The termination agreement will become null and void unless it is recorded on or before the earlier of:

(1) The expiration of one year from the date it was first executed or ratified by a unit owner.

(2) Such date as shall be specified in the termination agreement.

If, pursuant to a termination agreement, the real estate constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the condominium in both the grantor index and the grantee index. A termination agreement is effective only upon recordation.

(c) Status if real estate sold.--The association, on behalf of the unit owners, may contract for the sale of the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If the real estate constituting the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this subpart or the declaration.

(d) Status if real estate not sold.--If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f) and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(e) Distribution of assets of association.--Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, shall be held by the association as trustee or unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the

units which were recorded, filed of public record or otherwise perfected before termination may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(f) Respective interests of unit owners.--The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(g) Effect of foreclosure or enforcement of lien.--Except as provided in subsection (h), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

(h) Exclusion from condominium upon foreclosure.--If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration and if the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

(i) Ineffectiveness of termination provision.--In the case of a declaration that contains no provision expressly providing for a means of terminating the condominium other than a provision providing for a self-executing termination upon a specific date or upon the expiration of a specific time period, such termination provision shall be deemed ineffective if no earlier than five years before the date the condominium would otherwise be terminated owners of units to which at least 80% of the votes in the condominium are allocated vote that the self-executing termination provision shall be annulled, in which event the self-executing termination provision shall have no force or effect.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days)

2004 Amendment. Act 191 added subsec. (i).

Cross References. Section 3220 is referred to in sections 3102, 3219, 3301, 3303, 3312 of this title.

§ 3221. Rights of secured lenders.

(a) Secured lender approval.--The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions but no requirement for approval may operate to:

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or

(2) prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding or receiving and distributing any insurance proceeds pursuant to section 3312 (relating to insurance).

(b) Secured lender approval procedures.--If the declaration requires mortgagees or beneficiaries of deeds of trust encumbering the units to approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, then the executive board will provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified. If the notice to the secured lender, issued in accordance with the procedures set forth in this subsection, states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 45 days and the secured lender does not respond in writing within 45 days, then the secured lender will be deemed for all purposes to have approved the actions specified in the notice. Written notice to the secured lender shall be given by certified, registered or first-class mail, as evidenced by United States Postal Service certificate of mailing, postage prepaid, at the address provided by the secured lender or, in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust of record and at the address to which the unit owner mails any periodic payment paid to the secured lender. The notice to the secured lender shall include a statement of the specified action and a copy of the full text of any proposed amendment and a form prepared by the association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days)

Cross References. Section 3221 is referred to in section 3219 of this title.

§ 3222. Master associations.

(a) Applicability of section.--If the declaration for a condominium provides that any of the powers described in section 3302 (relating to powers of unit owners' association) with respect to the condominium are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more other condominiums or other incorporated or unincorporated associations, then, except as modified by this section, all provisions of this subpart applicable to unit owners' associations shall apply to any such master association insofar as its actions affect the condominium.

(b) Powers.--Unless a master association is acting in the capacity of an association described in section 3301 (relating to organization of unit owners' association) with respect to a condominium which is part of the master association, it may exercise with respect to the condominium only such powers set forth in section 3302 and only to the extent expressly permitted in the declaration of condominium which provides for the delegation of powers from its condominium association to the master association and accepted by such master association as indicated in the provisions of the declaration or other organizational documents of such master association.

(c) Liability of executive board members and officers.--If the declaration of a condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following such delegation. The officers and members of the governing board of the master association are subject to liability to the condominium association whose powers are delegated thereto and the unit owners of such condominium on the same basis as officers and executive board members of such condominium immediately before such delegation of powers.

(d) Rights and responsibilities of persons electing governing body.--The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 3303 (relating to executive board members and officers), 3308 (relating to meetings), 3309 (relating to quorums), 3310 (relating to voting; proxies) and 3320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association with respect to the exercise of powers delegated pursuant to a condominium declaration to such master association, but apply only to those persons who elect the governing body of a master association, whether or not those persons are otherwise unit owners within the meaning of this subpart.

(e) Election of master association governing body.--Notwithstanding the provisions of section 3303(e) with respect to the election of the executive board by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 3301, the instrument creating the master association and the declaration of each condominium or the organizational documents of other associations the powers of which are assigned pursuant to the declaration or organizational documents or delegated to the master association shall provide that the governing body of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums and other properties subject to the master association elect all members of the governing body of the master association.

(2) All members of the governing bodies of the condominium associations and other property owners' associations subject to the master association elect all members of the master association governing body.

(3) All unit owners of each condominium and other property owners' associations subject to the master association elect specified members of the master association governing body.

(4) All members of the governing bodies of the condominiums and other property associations subject to the master association elect specified members of the master association governing body.

(f) Delegation of responsibility and authority.--The provisions of this section shall apply to a condominium if and when:

(1) there occurs either a date specified in the declaration or any amendment thereto from and after which this section shall apply to the condominium;

(2) there occurs an event or action that the declaration or any amendment thereto states shall cause this section to become applicable, and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) such event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the condominium; and

(ii) that a copy of such instrument has been sent to all unit owners; or

(3) the declarant executes and records an instrument stating that this section shall thereafter apply to the condominium and that a copy of such instrument has been sent to the executive board and all unit owners.

Paragraph (3) shall be applicable only if the declarant shall have expressly reserved in the declaration, pursuant to section 3205(12) (relating to contents of declaration; all condominiums), the special declarant right to make this section applicable to the condominium and only if the instrument exercising such right shall have been recorded during the time period allowed for the exercise of such right.

(g) Delegation of all powers.--If all the powers of a condominium association are delegated to a master association and accepted by such master association pursuant to subsection (b), then the governing body of the master association may act in all respects as the executive board of the condominium and no separate executive board need be elected or exist.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

1992 Amendment. Act 168 added section 3222.

Cross References. Section 3222 is referred to in sections 3102, 3103, 3205, 3302 of this title.

§ 3223. Merger or consolidation of condominiums.

(a) General rule.--Any two or more condominiums by agreement of the unit owners as provided in subsection (b) may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums, and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant condominium shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting condominiums shall have been established under this subpart.

(b) Requirements of agreement.--The merger or consolidation of two or more condominiums pursuant to subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate such condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until so recorded.

(c) Reallocations.--Every merger or consolidation agreement must provide for the reallocation of the common element interests, common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association among the units of the resulting condominium either:

(1) by stating the reallocations or the formulas upon which they are based; or

(2) by stating the common element interests, common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the common element interests, common expense liability, including both general and limited common expenses, and portion of the votes in the association for the resulting condominium shall be the same as was allocated to each unit formerly comprising a part of the preexisting condominium by the declaration of the preexisting condominium.

(d) Action by declarant.--Notwithstanding the provisions of subsections (a) and (b), if a declarant expressly retained the special declarant right to merge or consolidate a condominium pursuant to section 3205(13) (relating to contents of declaration; all condominiums) and if the declarant exercised such right within the time period allowed for such exercise by giving written notice to that effect to all unit owners accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be executed by the declarant rather than by the president of the association of that condominium and without the necessity for approval or consent by unit owners or their mortgagees, provided that the agreement is recorded within the time period allowed for the exercise of this special declarant right.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

1992 Amendment. Act 168 added section 3223.

Cross References. Section 3223 is referred to in sections 3102, 3103, 3205 of this title.

CHAPTER 33

MANAGEMENT OF THE CONDOMINIUM

Sec.

- 3301. Organization of unit owners' association.
- 3302. Powers of unit owners' association.
- 3303. Executive board members and officers.
- 3304. Transfer of special declarant rights.
- 3305. Termination of contracts and leases of declarant.
- 3306. Bylaws.
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- 3308. Meetings.
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- 3311. Tort and contract liability.
- 3312. Insurance.
- 3313. Surplus funds.
- 3314. Assessments for common expenses.
- 3315. Lien for assessments.
- 3316. Association records.
- 3317. Association as trustee.

- 3318. Conveyance or encumbrance of common elements.
- 3319. Other liens affecting the condominium.
- 3320. Declarant delivery of items to association.
- 3321. Alternative dispute resolution in condominiums.
- 3322. Complaints filed with Bureau of Consumer Protection.

Enactment. Chapter 33 was added July 2, 1980, P.L.286, No.82, effective in 120 days.

§ 3301. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the first unit of the condominium is conveyed to a person other than a successor declarant. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 3220 (relating to termination of condominium) or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3301 is referred to in sections 3103, 3222 of this title.

§ 3302. Powers of unit owners' association.

(a) General rule.--Subject to the provisions of the declaration, the association, even if unincorporated, may:

- (1) Adopt and amend bylaws and rules and regulations.
- (2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
- (3) Hire and terminate managing agents and other employees, agents and independent contractors.
- (4) Institute, defend or intervene in litigation or administrative proceedings or engage in arbitrations or mediation in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
- (5) Make contracts and incur liabilities.
- (6) Regulate the use, maintenance, repair, replacement and modification of common elements, and to make reasonable accommodations or permit reasonable modifications to be made to units, the limited common elements or the common elements to accommodate handicapped, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.
- (7) Cause additional improvements to be made as a part of the common elements.
- (8) (i) Acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property other than common elements; and
 - (ii) convey or subject to a security interest common elements only pursuant to the provisions of section 3318 (relating to conveyance or encumbrance of common elements).
- (9) Grant easements, leases, licenses and concessions through or over the common elements, but any such easement, lease, license or concession:
 - (i) that is not for the benefit of all or substantially all of the unit owners shall not be granted without the same unit owner approval that is required for an amendment to the declaration; or
 - (ii) that materially impairs any right or benefit that one or more unit owners may have with respect to

the common elements shall not be granted without the prior written approval of those unit owners.

(10) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 3202(2) and (4) (relating to unit boundaries).

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard:

(i) Levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.

(ii) For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights, including, without limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 3407 (relating to resales of units) or statements of unpaid assessments. In addition, the association may impose a capital improvement fee, but no other fees, on the resale or transfer of units in accordance with the following:

(i) The capital improvement fee for any unit shall not exceed the annual assessments for general common expense charged to such unit during the most recently completed fiscal year of the association, provided that:

(A) in the case of resale or transfer of a unit consisting of unimproved real estate, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses charged to such unit during the most recently completed fiscal year of the association;

(B) in the case of resale or transfer of a unit which was created or added to the condominium in accordance with section 3211 (relating to the conversion and expansion of flexible condominiums) at some time during the most recently completed fiscal year of the association but was not in existence for the entire fiscal year, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses charged to a unit comparable to such unit during the most recently completed fiscal year of the association; and

(C) capital improvement fees are not refundable upon any sale, conveyance or any other transfer of the title to a unit.

(ii) Capital improvement fees allocated by an association must be maintained in a separate capital account and may be expended only for new capital improvements or replacement of existing common elements, improvements on the common elements and may not be expended for operation, maintenance or other purposes.

(iii) No capital improvement fee shall be imposed on any gratuitous transfer of a unit between any of the following family members: spouses, parent and child, siblings, grandparent and grandchild, nor on any transfer of a unit by foreclosure sale or deed in lieu of foreclosure to a secured lending institution as defined

by the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law.

(iv) No fees may be imposed upon any person who:

(A) acquires a unit consisting of unimproved real estate and signs and delivers to the association at the time of such person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months of its acquisition; and

(B) completes such reconveyance within 18 months.

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(14) Exercise any other powers conferred by the declaration or bylaws.

(15) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association.

(16) Exercise any other powers necessary and proper for the governance and operation of the association.

(17) Assign its right to future income, including the right to receive the payments made on account of common expense assessments. Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.

(18) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions of section 3222 (relating to master associations) and accept any assignment or delegation of powers from one or more condominiums or other incorporated or unincorporated associations.

(b) Restriction on limitations in declaration.--Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (a)(11).

2004 Amendment. Act 191 amended subsec. (a).

Cross References. Section 3302 is referred to in sections 3102, 3222, 3315 of this title.

§ 3303. Executive board members and officers.

(a) Powers and fiduciary status.--Except as provided in the declaration, the bylaws, in subsection (b) or other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith in a manner they reasonably believe to be in the best interests of the association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the

investment of trust funds and shall be governed in the management of the association's reserve funds by 20 Pa.C.S. § 7203 (relating to prudent investor rule). In performing his duties, an officer or executive board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more other officers or employees of the association whom the officer or executive board member reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the officer or executive board member reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the executive board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the officer or executive board member reasonably believes to merit confidence.

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with such care in the manner set forth in this section.

(b) Limitation on authority.--The executive board may not act on behalf of the association to amend the declaration (section 3219), to terminate the condominium (section 3220) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members (section 3303(e)) but the executive board may fill vacancies in its membership for the unexpired portion of any term. The executive board shall deliver to all unit owners copies of each budget approved by the executive board and notice of any capital expenditure approved by the executive board promptly after either such approval. In addition to other rights conferred by the declaration, bylaws or this subpart, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board, within 30 days after the approval.

(c) Status during period of declarant control.--Subject to subsection (d), the declaration may provide for a period of declarant control of the association during which period a declarant or persons designated by him may appoint and remove the officers and members of the executive board. Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period not exceeding seven years in the case of a flexible condominium containing convertible real estate or to which additional real estate may be added, or five years in the case of any other condominium. Regardless of the period provided in the declaration, a period of declarant control terminates no later than 180 days after conveyance of 75% of the units to unit owners other than a declarant. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period but in that event he may require, for the duration of the period of declarant control, that specified actions of the association

or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(d) Election of members during transfer of declarant control.--

(1) Not later than 60 days after conveyance of 25% of the units to unit owners other than a declarant, not less than 25% of the members of the executive board shall be elected by unit owners other than the declarant.

(2) Not later than 60 days after conveyance of 50% of the units to unit owners other than a declarant, not less than 33 1/3% of the members of the executive board shall be elected by unit owners other than the declarant.

(e) Election of members and officers following declarant control.--

(1) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members at least a majority of whom must be unit owners, except that the executive board may consist of two members, both of whom must be unit owners, if the condominium consists of two units. The executive board shall elect the officers. The persons elected shall take office upon election.

(2) In the event that the election of the executive board by the unit owners fails to take place not later than the termination of a period of declarant control as provided in this section, then a special meeting of the unit owners may be called for such purpose by any member of the executive board elected by the unit owners or, if there is no such member of the executive board, the unit owners entitled to cast at least 10% of the votes in the association.

(3) A vote by a unit owner must be submitted by the unit owner to an independent reviewer who shall tally the results of the election and certify the results to the executive board and unit owners. In order to be eligible to vote in the election, a unit owner shall be in good standing with the association. The executive board shall present the official election results based on the certified election report from the independent reviewer at a meeting of the unit owners and shall enter the results in the meeting records. All votes by unit owners under this paragraph shall be submitted to the independent reviewer in accordance with the approved methods of voting as provided in this subpart. This paragraph shall only apply to a condominium with at least 500 units. If a condominium has less than 500 units, the association may opt in to the requirements under this paragraph by a vote of at least 51% of the votes collected from the unit owners in person, electronically or by absentee ballot which are in favor of the requirements under this paragraph.

(f) Calculation of percentages of units conveyed.--In determining whether the period of declarant control has terminated under subsection (c), or whether unit owners other than a declarant are entitled to elect members of the executive board under subsection (d), the percentage of the units conveyed is presumed to be that percentage which would have been conveyed if all the units the declarant has built or reserved the right to build in the declaration were included in the condominium.

(g) Removal of member of executive board.--Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a

quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant, provided notice of the intention to remove a member of the executive board is given with the notice of the meeting at which such removal is considered, as provided under section 4303(g) (relating to executive board members and officers). (Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 amended subsecs. (d) and (e) and added subsec. (g).

2004 Amendment. Act 191 amended subsec. (a).

Cross References. Section 3303 is referred to in sections 3102, 3103, 3222, 3304, 3305, 3306, 3311, 3320, 3411 of this title.

§ 3304. Transfer of special declarant rights.

(a) Execution and recording instrument of transfer.--No special declarant rights (section 3103) created or reserved under this subpart may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the condominium in both the grantor and grantee index. The instrument is not effective unless executed by the transferee.

(b) Liability of declarant following transfer.--Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this subpart. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (section 3103), the transferor is jointly and severally liable with any successor for the liabilities and obligations or liabilities of the successor relating to the condominium.

(2.1) If a transferor retains any special declarant right, but transfers one or more other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this subpart or by the declaration relating to the retained special declarant rights arising after the transfer.

(3) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor and to whom the special declarant right has not theretofore been assigned.

(c) Rights of purchaser in foreclosure, etc. proceedings.--Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust or sale under 11 U.S.C. (relating to bankruptcy) or receivership proceedings of any units owned by a declarant in the condominium or additional real estate in a flexible condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to such units or additional real estate, or only to any rights

reserved in the declaration pursuant to section 3217 (relating to declarant's offices, models and signs) and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Rights of declarant following foreclosure, etc. proceedings.--Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust or sale under 11 U.S.C. (relating to bankruptcy) or receivership or similar proceedings of all units and other real estate in a condominium owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control (section 3303(c)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) Liabilities and obligations of successors.--The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this subpart or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4), who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this subpart or the declaration:

(i) on a declarant which relate to his exercise or nonexercise of special declarant rights; or

(ii) on his transferor, other than:

(A) misrepresentations by any previous declarant, except to the extent knowingly continued or permitted to continue without correcting such misrepresentations;

(B) warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs (section 3217), if he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant except the obligation to provide a public offering statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights

other than any right held by his transferor to control the executive board in accordance with the provisions of section 3303(c) (relating to executive board members and officers) for the duration of any period of declarant control and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection he is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under section 3303(c).

(f) Limitation on liability of successor.--Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant other than claims and obligations arising under this subpart or the declaration.
(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3304 is referred to in section 3103 of this title.

§ 3305. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the unit owners pursuant to section 3303(e) (relating to executive board members and officers) takes office:

- (1) any management contract, employment contract or lease of recreational or parking areas or facilities;
 - (2) any other contract or lease to which a declarant or an affiliate of a declarant is a party; or
 - (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing;
- may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to section 3303(e) takes office upon not less than 90 days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size unless the real estate subject to that lease was submitted to the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

Cross References. Section 3305 is referred to in section 3402 of this title.

§ 3306. Bylaws.

(a) Mandatory provisions.--The bylaws of the association must provide for:

- (1) The number of members of the executive board and the titles of the officers of the association.
- (2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify.
- (3) The qualifications, powers and duties, terms of office and manner of electing executive board members and officers and removing executive board members and officers under section 3303(g) (relating to executive board members and officers) and filling vacancies.
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.
- (5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.
- (6) The method of amending the bylaws. The following apply:

(i) The bylaws may be amended only by vote or agreement of unit owners of units to which at least:

(A) fifty-one percent of the votes in the association are allocated;

(B) any larger majority as specified in the bylaws; or

(C) a smaller majority as specified in the bylaws if all of the units are restricted exclusively to nonresidential use.

(ii) The vote may be taken only at a scheduled meeting and following notice to the unit owners as provided under section 3308 (relating to meetings) that was advertised 14 days in advance to the unit owners. Absentee voting shall be permitted to unit owners provided that the ballots must be submitted to an independent reviewer by the commencement of the scheduled meeting.

(b) Other provisions.--Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(c) Corrective amendments.--Except as otherwise provided in the bylaws or code of regulations, if any amendment to the bylaws or code of regulations is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the bylaws or code of regulations that is defective, missing or inconsistent with any other provision thereof, with the declaration or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in condominium projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the condominium or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents, tenants or employees, then at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the unit owners or holders of any liens on all or any part of the condominium, upon receipt by the executive board of an opinion from legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 amended subsec. (a)(3) and (6).

2020 Amendment. Act 11 added subsec. (c).

§ 3307. Upkeep of condominium.

(a) General rule.--Except to the extent provided by the declaration or section 3312(d) (relating to insurance), the association is responsible for maintenance, repair and replacement of the common elements and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is

inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible is liable for the prompt repair thereof.

(b) Nonresidential condominiums.--If any unit in a condominium all of whose units are restricted to nonresidential use is damaged and the exterior appearance of the unit is thereby affected, the person responsible for the exterior of the unit shall cause the unit to be repaired or rebuilt to the extent necessary to restore its exterior appearance. If that person fails within a reasonable period of time to effect the repairs or rebuilding, the association may purchase the unit at its fair market value to be determined by an independent appraiser selected by the association.

Cross References. Section 3307 is referred to in section 3102 of this title.

§ 3308. Meetings.

(a) Timing and notice.--The bylaws must require that meetings of the association be held at least once each year and provide for special meetings. The bylaws must specify which of the association's officers, not less than ten nor more than 60 days in advance of any meeting, shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of a meeting may be delivered by electronic means if the unit owner has agreed in writing to accept the notice by electronic means or where the bylaws permit electronic notices. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget or assessment changes and, where the declaration or bylaws require approval of unit owners, any proposal to remove an executive board member or officer.

(b) Delivery of notice.--The bylaws must require that notice of virtual meetings of the association be given by:

(1) First class or express mail, postage prepaid, or courier service, charges prepaid, to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. Notice under this paragraph shall be deemed to have been given to a unit owner when deposited in the United States mail or with a courier service for delivery to the unit owner.

(2) Facsimile transmission, e-mail or other electronic communication to the unit owner's facsimile number or address for e-mail or other electronic communications supplied by the unit owner, provided that the unit owner has agreed in writing to accept the notice by electronic means or where the bylaws expressly permit means of delivering electronic notice. Notice under this paragraph shall be deemed to have been given to the unit owner when sent.

(c) Use of remote technology.--Except as otherwise provided in the bylaws, an individual may participate in a meeting of the executive board or association by means of a conference telephone or other remote electronic technology, including the Internet, which allows participants in the meeting to hear each other. Participation in a meeting as authorized under this subsection shall be deemed in-person attendance at the meeting.

(d) Pre-election sessions.--The bylaws must require that, in the event that there are more candidates than open positions on the executive board, then, upon request of one or more of

the candidates, the association shall hold a special session at least seven days before the election of an executive board member to allow the unit owners to meet each candidate for an executive board position. Each candidate for an executive board position shall have equal time to address the unit owners during a special session under this subsection.

(e) Recorded meeting.--Unless the bylaws provide otherwise, meetings of the association may be recorded by the executive board via audio or video technology, provided that an announcement is made by the presiding officer at the commencement of the meeting that the meeting will be recorded. A recorded meeting under this subsection shall be maintained and available to unit owners for a period of no less than six months after the date of the meeting.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

Cross References. Section 3308 is referred to in sections 3103, 3222, 3306, 3322 of this title.

§ 3309. Quorums.

(a) Association.--

(1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than 10%.

(2) If the association fails to meet a quorum at two subsequent meetings under this subsection, the association may utilize the provisions under 15 Pa.C.S. § 5756(b) (relating to quorum) to meet quorum requirements, except as otherwise provided in the declaration or bylaws of the association.

(b) Executive board.--Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on that board are present at the beginning of the meeting. (Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 amended subsec. (a).

Cross References. Section 3309 is referred to in sections 3103, 3222, 3322 of this title.

§ 3310. Voting; proxies.

(a) Unit owner other than natural person.--If the owner of a unit is a corporation, joint venture, partnership or unincorporated association, the natural person who shall be entitled to cast the vote for such unit shall be the person named in a certificate executed by such entity pursuant to its governing documents. If the owner of a unit is a trust, the trustee or trustees shall be deemed to be the owner for the voting purposes. Where the ownership of a unit is in more than one person, the natural person who shall be entitled to cast the vote of such unit shall be the person named in a certificate executed by all of the owners of such unit and filed with the secretary or, in the absence of such named person from the meeting or the failure to execute and file such a certificate, the person who shall be entitled to cast the vote of such unit shall be the person owning such unit who is present. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with their unanimous agreement unless the declaration expressly provides otherwise.

There shall be deemed to be unanimous agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. Except where execution by owners of a unit in the same manner as a deed is required in this subpart and subject to the provisions of the declaration and bylaws, wherever the approval or disapproval of a unit owner is required by this subpart, the declaration or the bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such unit at any meeting of the association.

(b) Proxies.--Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter term.

(c) Cumulative and class voting.--(Deleted by amendment).

(d) Units owned by association.--No votes allocated to a unit owned by the association may be cast.

(e) Approved methods of voting.--Methods of voting shall be in accordance with the following:

(1) Except to the extent expressly prohibited in an association's declaration or bylaws, the voting rights of a unit owner may be cast or given in the following ways:

(i) in person or by proxy at a meeting of the association;

(ii) by absentee or electronic ballot in accordance with this subpart; or

(iii) by another method of voting expressly provided in the association's declaration or bylaws.

(2) An absentee or electronic ballot may:

(i) Be counted as a unit owner present and voting for the purpose of establishing a quorum, and otherwise, only for agenda items appearing on the ballot.

(ii) Not be counted even if properly delivered, if the unit owner attends the meeting to vote in person. A vote cast at a meeting by a unit owner supersedes a vote submitted by absentee or electronic ballot previously submitted for that agenda item.

(3) For the purposes of this subsection, the term "electronic ballot" means a ballot cast or given by electronic transmission over the Internet, vote management system or the association's community network, whether by direct connection, intranet, telecopier, electronic mail or other technological means, if the identity of the unit owner submitting the ballot can be confirmed and a receipt of the electronic transmission and ballot can be made available to the unit owner.

(f) Acclamation.--Unless the bylaws of the association provide otherwise, in the event that an election for a position on the executive board is uncontested, the officer or chair presiding at the election meeting may declare the nominee elected by acclamation after determining there are no further nominations.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added subsecs. (e) and (f).

Cross References. Section 3310 is referred to in sections 3103, 3222, 3322 of this title.

§ 3311. Tort and contract liability.

(a) General rule.--

(1) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the condominium which the declarant has the responsibility to maintain may not be brought against the association or against a unit owner other than a declarant.

(2) Except as otherwise provided by paragraph (1):

(i) An action in tort alleging a wrong done by the association or by an agent or employee of the association, or an action arising from a contract made by or on behalf of the association, shall be brought against the association.

(ii) A unit owner shall not be subject to suit or, except as otherwise provided by subsection (b), be otherwise directly or indirectly held accountable for the acts of the association or its agents or employees on behalf of the association.

(3) If the tort or breach of contract occurred during any period of declarant control (section 3303(c)), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney's fees. If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the declarant under this paragraph unless the association shall have given the declarant:

(i) notice of the existence of such a claim promptly after the date on which one or more members of the executive board who are not designees of the declarant learns of the existence of such a claim; and

(ii) an opportunity to defend against such claim on behalf of the association but at the declarant's expense.

Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(4) A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

(b) Lien of judgment.--Except as otherwise provided in this subpart, a judgment for money against the association, if and when entered of record against the name of the association in the office of the clerk of the court of common pleas of the county or counties where the condominium is located, or in the office of the branch of the court of common pleas embracing such county or counties, shall also constitute a lien against each unit for a pro rata share of the amount of that judgment, including interest thereon, based on the common expense liability allocated to that unit (section 3208). No other property of a unit owner is subject to the claims of creditors of the association.

(c) Indexing judgment.--A judgment against the association shall be indexed in the name of the condominium.

(d) Applicability of section.--The provisions of this section shall be applicable to all associations without regard to whether the association is organized as a corporation or as an unincorporated association.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3311 is referred to in section 3102 of this title.

§ 3312. Insurance.

(a) Insurance to be carried by association.--Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and units exclusive of improvements and betterments installed in units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property exclusive of land, excavations, foundations and other items normally excluded from property policies.

(2) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

(3) Any property or comprehensive general liability insurance carried by the association may contain a deductible provision.

(b) Other insurance carried by association.--If the insurance described in subsection (a) is not maintained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance and the association in any event may carry any other insurance in such reasonable amounts and with such reasonable deductibles as the executive board may deem appropriate to protect the association or the unit owners.

(c) Contents of insurance policies.--Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household.

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

(d) Proceeds from property insurance.--Any loss covered by the property policy under subsection (a)(1) shall be adjusted with the association but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that

purpose or otherwise to the association and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (g), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the condominium is terminated.

(e) Unit owner may obtain insurance.--A unit owner may insure his unit for all losses to his unit, including all losses not covered by the insurance maintained by the association due to a deductible provision or otherwise. An insurance policy issued to the association shall not prevent a unit owner from obtaining insurance for his own benefit.

(f) Evidence and cancellation of insurance.--An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurance may not be cancelled until 30 days after notice of the proposed cancellation has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

(g) Disposition of insurance proceeds.--

(1) Any portion of the condominium damaged or destroyed shall be repaired or replaced promptly by the association unless:

- (i) the condominium is terminated;
- (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- (iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

Except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves which have not been identified by the executive board to fund costs of capital expenditures for the current fiscal year of the association is a common expense.

(2) If the entire condominium is not repaired or replaced:

- (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium;
- (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned; and
- (iii) the remainder of the proceeds shall be distributed to all the unit owners in proportion to their common element interests.

If the unit owners vote not to rebuild any unit, that unit's entire common element interest, votes in the association and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 3107(a) (relating to eminent domain) and the association

promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(3) Notwithstanding the provisions of this subsection, section 3220 (relating to termination of condominium) governs the distribution of insurance proceeds if the condominium is terminated.

(h) Nonresidential condominiums.--The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

(i) Recovery of deductibles.--If any insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 3314(c) (relating to assessments for common expenses). (Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days)

2004 Amendment. Act 191 amended subsecs. (a), (b), (e) and (g) and added subsec. (i).

Cross References. Section 3312 is referred to in sections 3221, 3307 of this title.

§ 3313. Surplus funds.

Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which such limited common expenses pertain in excess of the amount required for actual limited common expenses and reserves for future limited common expenses shall be credited to each unit assessed for a share of such limited common expenses in proportion to the share of such limited common expenses so assessed, these credits to be applied, unless the declaration provides otherwise, to the next monthly assessments of limited common expenses against that unit under the then current fiscal year's budget, and thereafter, until exhausted. Any amounts accumulated from assessments for general common expenses and income from the operation of the common elements, other than limited common elements with regard to which limited common expenses are assessed, in excess of the amount required for actual general common expenses and reserves for future general common expenses shall be credited to each unit in accordance with such unit's interests in common elements, these credits to be applied, unless the declaration provides otherwise, to the next monthly assessments of general common expenses against that unit under the then current fiscal year's budget, and thereafter, until exhausted. (Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3313 is referred to in sections 3315, 3407 of this title.

§ 3314. Assessments for common expenses.

(a) General rule.--Until the association makes a common expense assessment, the declarant shall pay all the expenses of the condominium. After any assessment has been made by the association, assessments shall be made at least annually and shall be based on a budget adopted at least annually by the association. The budgets of the association shall segregate limited common expenses from general common expenses if and to the extent appropriate.

(b) Allocation and interest.--Except for assessments under subsection (c), common expenses shall be assessed against all the units in accordance with the common expense liability

allocated to each unit (section 3208) in the case of general common expenses and in accordance with subsection (c) in the case of special allocations of expenses. Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding 15% per year.

(c) Special allocations of expenses.--Except as provided by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred.

(2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities that are separately metered to each unit shall be assessed in proportion to usage.

(4) If any common expense is caused by the negligence or misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(d) Reallocation.--If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3314 is referred to in sections 3102, 3103, 3312, 3315, 3316 of this title.

§ 3315. Lien for assessments.

(a) General rule.--The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage thereon, except the mortgage for which the sale is being held, if the mortgage is or shall be prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. § 8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for condominium assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3302(a)(10), (11) and (12) (relating to powers of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments is not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of lien.--

(1) General rule.--A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recordation of the declaration.

(ii) (A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the

due date of the assessment, if the assessment is not payable in installments, or the due date of the unpaid installment, if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by mortgages or deeds of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Limited nondivestiture.--The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 3314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 3314(b) other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) Monetary exemption.--The lien is not subject to the provisions of 42 Pa.C.S. § 8123 (relating to general monetary exemption).

(c) Notice and perfection of lien.--Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(d) Limitation of actions.--A lien for unpaid assessments is extinguished unless proceedings to enforce the lien or actions or suits to recover sums for which subsection (a) establishes a lien are instituted within four years after the assessments become payable.

(e) Other remedies preserved.--Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(f) Costs and attorney's fees.--A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) Statement of unpaid assessments.--The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit pursuant to section 3313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

(h) Application of payments.--Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any

late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment. (Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days; July 4, 2008, P.L.619, No.49, eff. imd.; Apr. 20, 2016, P.L.156, No.21, eff. 60 days)

2016 Amendment. Act 21 amended subsec. (d).

2008 Amendment. Act 49 amended subsec. (b) (2) (i).

2004 Amendment. Act 191 amended subsec. (b) and added subsec. (h).

Cross References. Section 3315 is referred to in section 3102 of this title.

§ 3316. Association records.

During the period of declarant control, the association shall keep detailed financial records, including, without limitation, a record of expenses paid by the declarant until the commencement of common expense assessments by the association under section 3314(a) (relating to assessments for common expenses), the commencement date of common expense assessments by the association and, for the period commencing on such date, a record for each unit in the condominium (including those owned by the declarants) of its common expense assessments and the payments thereof. The association shall keep financial records sufficiently detailed to enable the association to comply with section 3407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3316 is referred to in sections 3102, 3103, 3322 of this title.

§ 3317. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

§ 3318. Conveyance or encumbrance of common elements.

(a) General rule.--Portions of the common elements may be conveyed or subjected to a security interest by the association if the persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant or any larger percentage the declaration specifies, agree to that action, but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) Required agreement.--An agreement to convey common elements or subject them to a security interest must be

evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recordation.

(c) Association powers.--The association on behalf of the unit owners may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Other conveyances or encumbrances void.--Any purported conveyance, encumbrance, judicial sale, tax sale or other voluntary or involuntary transfer of common elements, unless made pursuant to this section, is void.

(e) Right of access and support.--A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its right of access and support.

(f) Preexisting encumbrances.--Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(g) Limitation.--Common elements which may be conveyed or encumbered pursuant to this section shall not include any land, buildings or other facilities:

- (1) containing or comprising one or more units; or
- (2) necessary for the use or operation of one or more units.

(h) Subject to declaration.--An interest in common elements that is subject to the declaration prior to conveyance or encumbrance shall remain subject to the declaration following the conveyance or encumbrance, unless the deed or agreement to convey the common elements or subject them to a security interest specifically provides otherwise.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (d) and added subsec. (h).

1992 Amendment. Act 168 added section 3318.

Cross References. Section 3318 is referred to in sections 3302, 3319 of this title.

§ 3319. Other liens affecting the condominium.

(a) General rule.--Except as provided in subsection (b), a judgment for money against the association, if and when the judgment has been perfected as a lien on real property, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) If security interest in common elements.--If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3318 (relating to conveyance or encumbrance of common elements), the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) Release upon payment of unit owner's share.--Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) Indexing of judgments.--A judgment against the association must be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

1992 Amendment. Act 168 added section 3319.

Cross References. Section 3319 is referred to in section 3102 of this title; section 5607 of Title 53 (Municipalities Generally).

§ 3320. Declarant delivery of items to association.

Except as set forth in paragraph (9), not later than 60 days after the required termination of the period of declarant control pursuant to section 3303(c) (relating to executive board members and officers) or the declarant's earlier voluntary termination of control, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including, without limitation, all of the following items, if applicable, as to each condominium or other owners' association operated by the association:

(1) The original or a certified copy or a photocopy of the recorded declaration and all amendments thereto. If a photocopy is delivered, such photocopy shall reflect the recording information and shall be accompanied by an affidavit executed by the declarant certifying such photocopy to be a true, correct and complete copy of the actual recorded declaration and all amendments thereto.

(2) The association articles of incorporation, if incorporated, with evidence of filing with the Department of State.

(3) A copy of the bylaws.

(4) A complete set of all executive board minutes and resolutions and all other books and records of the association.

(5) A complete copy of all rules and regulations that may have been adopted.

(6) Copies of all Federal, State and local tax returns filed by or on behalf of the association and copies of any tax-exempt elections made by or on behalf of the association.

(7) Copies of all past and current budgets of the association.

(8) Resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish or has relinquished control of the association.

(9) Not later than 90 days after the required termination of the period of declarant control pursuant to section 3303(c) or the declarant's earlier voluntary termination of control, a complete audit of the finances of the association for the time period between the last audit of the association's financial books and records and the date of termination of the period of declarant control, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, the costs of which audit are to be borne equally by the declarant and the association. If the condominium consists of not more than 12 units, a warranty from the declarant to the association that the books and records of the association completely and accurately reflect all activities of the association from its inception through the date of termination of the period of declarant control may be substituted for the audit referred to in this paragraph.

(10) All association funds or control thereof.

(11) All tangible personal property and inventories thereof:

(i) that may have been represented or should have been represented by the declarant in any public offering statement, sales materials or other writings to be part of the common elements; or

(ii) that is otherwise property of the association.

(12) A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation or remodeling of any buildings and improvements within the condominium and in the construction and installation of any mechanical components and equipment serving the buildings and improvements and property, if and to the extent the construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the declarant and substantially completed during the period commencing three years prior to the date of the first public offering statement regarding the condominium, unless no public offering statement is required for any unit in the condominium in which event such period shall commence on the date of the recordation of the condominium declaration or amendment thereto with respect to such improvements, and ending on the date by which compliance with this section is required. In the event such construction, rehabilitation, renovation, remodeling or installation was substantially completed within such period but not by or on behalf of the declarant, the obligation of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant and to use reasonable efforts to obtain and provide any such plans, drawings or specifications not within the possession of the declarant. If such construction, rehabilitation, renovation, remodeling or installation was substantially completed more than three years prior to the commencement of the period described in this paragraph, the obligations of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant. To the extent previously made available to the declarant, the declarant in all cases shall deliver to the association owners, operating, care and maintenance manuals and other information regarding mechanical components and equipment serving any buildings and improvements in the condominium. A declarant's delivery of any plans, drawings or specifications pursuant to this paragraph shall not

constitute a representation or warranty of the accuracy or completeness of such plans, drawings or specifications and shall not expand or otherwise affect the declarant's warranties created under section 3411 (relating to warranty against structural defects).

(13) All insurance policies insuring the association then in force.

(14) Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the condominium, if and to the extent available.

(15) Any other permits issued by governmental bodies applicable to the condominium property which are then currently in force, all notices of violations of governmental requirements then outstanding and uncured and all reports of investigations for the presence of hazardous conditions as defined in section 3402(a)(26) (relating to public offering statement; general provisions).

(16) Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the condominium property or have supplied equipment or services to the condominium property.

(17) A roster of unit owners and mortgagees and their respective addresses and telephone numbers, if known, as shown on the declarant's records.

(18) Employment contracts in which the association is or is to be one of the contracting parties.

(19) Service and other contracts and leases in which the association is or is to be one of the contracting parties and service contracts in which the association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

1992 Amendment. Act 168 added section 3320.

Cross References. Section 3320 is referred to in section 3222 of this title.

§ 3321. Alternative dispute resolution in condominiums.

(a) Applicability.--

(1) A condominium established after the effective date of this section shall adopt bylaws in compliance with this section.

(2) A condominium established on or before the effective date of this section may adopt bylaws in compliance with the provisions of this section.

(b) Procedures.--

(1) The bylaws shall establish procedures for an alternative dispute resolution procedure for disputes between:

(i) two or more unit owners; or

(ii) a unit owner and the association.

(2) Alternative dispute resolution shall be limited to disputes where all parties agree to alternative dispute resolution.

(3) Costs and fees associated with alternative dispute resolution, excluding attorney fees, shall be assessed equally against all parties to a dispute.

(c) Construction.--Nothing in this section shall be construed to affect or impair the right of a unit owner,

declarant or association to pursue a private cause of action or seek other relief.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

2018 Amendment. Act 17 added section 3321.

Cross References. Section 3321 is referred to in section 3322 of this title.

§ 3322. Complaints filed with Bureau of Consumer Protection.

(a) General rule.--A unit owner in good standing may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General in the event of a violation by the declarant or the association of sections 3308 (relating to meetings), 3309 (relating to quorums), 3310 (relating to voting; proxies) and 3316 (relating to association records).

(b) Condition.--If an alternative dispute resolution procedure is available to the unit owner under the association's declaration, bylaws, rules or regulations, a complaint may not be filed by a unit owner with the Bureau of Consumer Protection until the earlier of:

(1) the unit owner exhausting the alternative dispute resolution procedure without a resolution between the unit owner and the association; or

(2) at least 100 days have passed since the unit owner commenced the alternative dispute resolution procedure and the unit owner and association having not reached a resolution.

(c) Immediate filing.--A complaint may be filed by a unit owner with the Bureau of Consumer Protection immediately if:

(1) an alternative dispute resolution procedure is not available to the unit owner under the association's declaration, bylaws, rules or regulations; or

(2) the association refuses alternative dispute resolution under section 3321(b)(2) (relating to alternative dispute resolution in condominiums).

(d) Construction.--Nothing in this section shall be construed to affect or impair the right of a unit owner, declarant or association to pursue a private cause of action or seek other relief.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

2018 Amendment. Act 17 added section 3322.

CHAPTER 34

PROTECTION OF PURCHASERS

Sec.

- 3401. Applicability; waiver.
- 3402. Public offering statement; general provisions.
- 3403. Public offering statement; time-share estates.
- 3404. Public offering statement; condominiums containing conversion buildings.
- 3405. Public offering statement; condominium securities.
- 3406. Purchaser's right to cancel.
- 3407. Resales of units.
- 3408. Escrow of deposits.
- 3409. Release of liens.
- 3410. Condominiums containing conversion buildings.
- 3411. Warranty against structural defects.
- 3412. Effect of violations on rights of action.
- 3413. Labeling of promotional material.
- 3414. Declarant's obligation to complete and restore.

Enactment. Chapter 34 was added July 2, 1980, P.L.286, No.82, effective in 120 days.

§ 3401. Applicability; waiver.

(a) General rule.--This chapter applies to all units subject to this subpart, except as provided in subsection (b) and section 3411 (relating to warranty against structural defects) or as modified or waived by agreement of the purchaser of any unit which is intended for nonresidential use at the time of sale of such unit by the declarant or by agreement of purchasers of units in a condominium who are or intend to be in the business of buying and selling condominium units, provided that:

(1) a purchaser of a unit intended for residential use at the time of sale by the declarant may not modify or waive the provisions of section 3411 with regard to such unit and the common elements;

(2) with regard to any limited common element appurtenant only to nonresidential units, the unit owners of all such units have agreed to such modification or waiver and, with regard to any common elements, other than limited common elements, in a condominium in which all units are restricted to nonresidential use, all unit owners have agreed to such modification or waiver; and

(3) no modification or waiver shall prevent any unit owner from indirectly benefiting from any provision in this chapter by reason of such unit owner being a unit owner in the condominium and a member of the association.

(b) Public offering statements.--A public offering statement need not be prepared or delivered in the case of:

(1) a gratuitous transfer of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition of a condominium situated wholly outside this Commonwealth pursuant to a contract executed wholly outside this Commonwealth; or

(6) a transfer to which section 3407 (relating to resales of units) applies.

(c) Resale certificates.--A resale certificate as described in section 3407 need not be prepared or delivered in the cases described in subsection (b)(1) through (5).

(d) Unified public offering statement.--If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this Commonwealth, a single public offering statement conforming to the requirements of sections 3402 (relating to public offering statement; general provisions), 3403 (relating to public offering statement; time-share estates) and 3404 (relating to public offering statement; condominiums containing conversion buildings) as those requirements relate to any real estate regimes in which the unit is located and to any other requirements imposed under the laws of this Commonwealth may be prepared and delivered in lieu of providing two or more public offering statements.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3401 is referred to in sections 3102, 3406 of this title.

§ 3402. Public offering statement; general provisions.

(a) General rule.--Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the condominium.

(2) A general description of the condominium, including without limitation the types, number and declarant's schedule of commencement and completion of construction of all buildings, units and amenities. The public offering statement shall also contain a narrative description of the type and character of units offered, including a statement of the degree of completion to be provided or undertaken by the declarant of such units and the common elements necessary for use and enjoyment of such units upon the conveyance by the declarant of the units offered.

(3) The total number of additional units that may be included in the condominium and the proportion of units the declarant intends to rent or market in blocks of units to investors.

(4) A brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 3206(1) (relating to contents of declaration; flexible condominiums) and the expected effects that withdrawal would have on the remaining portion of the condominium.

(5) Copies and a brief narrative description of the significant features of the declaration (other than the plats and plans), and the bylaws, rules and regulations, the agreement of sale, copies of any contracts and leases to be signed by the purchasers prior to or at closing and a brief narrative description of any other contracts or leases or agreements of a material nature to the condominium that will or may be subject to cancellation by the association under section 3305 (relating to termination of contracts and leases of declarant).

(6) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget and a statement of the budget's material assumptions, including those concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.

(ii) A statement containing a description of any provisions made in the budget for reserves for anticipated material capital expenditures or any other reserves or, if no provision is made for reserves, a statement to that effect.

(iii) The projected common expense assessment by category of expenditures for the association.

(iv) The projected monthly common expense assessment for each type of unit.

(7) Any:

(i) services not reflected in the budget that the declarant provides, or expenses that he pays, and that he expects may become at any subsequent time a common expense of the association; and

(ii) personal property not owned by the association but provided by the declarant and being used or to be used in the operation and enjoyment of the common elements which is or will be required in connection with the operation and enjoyment of the common elements after such personal property is no longer provided by the declarant, and the projected common expense assessment for the association and for each type of unit attributable to each of those services or expenses and purchase or rental of such personal property.

(8) Any initial or special fee due from the purchaser at closing together with a description of the purpose and method of calculating the fee.

(9) A description of any liens, defects or encumbrances on or affecting the title to the condominium.

(10) A description of any financing for purchasers offered or arranged by the declarant.

(11) The terms and significant limitations of any warranties provided by the declarant including statutory warranties and limitations on the enforcement thereof or on damages.

(12) A statement in at least ten-point bold face type, appearing on the first page of the public offering statement, as follows:

(i) That within 15 days after receipt of a public offering statement, or within seven days in the case of the sale of a time-share estate, or an amendment to the public offering statement that materially and adversely affects the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) That if a declarant fails to provide a public offering statement, and any amendments thereto, to a purchaser before conveying a unit, that purchaser may recover from the declarant damages as provided in section 3406(c) (relating to purchaser's right to cancel).

(iii) A description of such damages.

(iv) That if a purchaser receives the public offering statement more than 15 days before signing a contract, he cannot cancel the contract, or more than seven days in the case of the sale of a time-share estate, except that, in accordance with subparagraph (i), he shall have the right to cancel the contract before conveyance within 15 days (seven days in the case of the sale of a time-share estate) after receipt of any amendment thereto that would have a material and adverse effect on the rights or obligations of that purchaser.

(13) A statement of any judgments against the association, the status of any pending suits to which the association is a party and the status of any pending suits material to the condominium of which a declarant has actual knowledge.

(14) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account in accordance with the provisions of section 3408 (relating to escrow of deposits) and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 3406.

(15) Any restraints on alienation of any portion of the condominium.

(16) A description of all insurance coverage provided or intended to be provided if such insurance is not then in

effect for the benefit of unit owners, including the types and extent of coverage and the extent to which such coverage includes or excludes improvements or betterments made to units.

(17) Any fees or charges to be paid by unit owners, currently or in the future, for the use of the common elements, limited common elements and other facilities related to the condominium.

(18) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to section 3414 (relating to declarant's obligation to complete and restore).

(19) All unusual and material circumstances, features and characteristics of the condominium and the units.

(20) In the case of a leasehold condominium, at least the following information:

(i) The name and address of each lessor and his assignee, if any.

(ii) Any relationship between the declarant and any lessor or assignee.

(iii) A description of the leased property.

(iv) The rent and any provision in the lease for increases in the rent and any other charges or payments required to be paid by the lessee under the lease.

(v) Whether the lessee has any right to terminate the lease.

(vi) The information contained in the declaration as required by section 3207(a) (relating to leasehold condominiums).

(vii) The following notice in bold type: "Purchasers should be aware that this is a leasehold condominium and the purchaser's interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability."

(21) A statement containing a declaration as to the present condition of all structural components and major utility installations in the subject property, including the dates of construction, installation and major repairs if known or ascertainable, and the expected useful life of each item, together with the estimated cost (in current dollars) of replacing each of the same.

(22) A description of how votes are allocated among the units and a statement as to whether cumulative or class voting is permitted and, if so, under what circumstances. Such statement shall also explain the operation of such cumulative or class voting.

(23) A description of any circumstances under which the association is to become a master association or part of a master association.

(24) A statement of all governmental approvals and permits required for the use and occupancy of the condominium indicating the name and expiration date of each such approval or permit that has been obtained and, as to any governmental approvals or permits that have not been obtained, a statement indicating when each such permit or approval is expected to be obtained and the person who shall bear the expense of obtaining each such permit or approval.

(25) A statement as to whether there are any outstanding and uncured notices of violations of governmental requirements and, if there are any such notices of violations, a description of the alleged violation and a statement indicating when each violation is expected to be

cured and the person who shall bear the expense of curing such violation.

(26) A statement as to whether the declarant has knowledge of any one or more of the following:

(i) Hazardous conditions, including contamination affecting the condominium site by hazardous substances, hazardous wastes or the like, or the existence of underground storage tanks for petroleum products or other hazardous substances.

(ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the condominium site.

(iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority in order to correct any hazardous conditions, and any action taken pursuant to those recommendations.

If the declarant has no knowledge of such matters, the declarant shall make a statement to that effect. Declarant shall also set forth the address and phone number of the regional offices of the Department of Environmental Resources and the United States Environmental Protection Agency where information concerning environmental conditions affecting the condominium site may be obtained.

(b) Exceptions.--If a condominium composed of not more than 12 units is not a flexible condominium and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums or other real estate, a public offering statement may but need not include the information otherwise required by subsection (a)(3), (4) and (18) and the narrative descriptions of documents required by subsection (a)(5).

(c) Amendment for material change in information.--A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 amended subsec. (a)(17).

References in Text. The Department of Environmental Resources, referred to in subsec. (a), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Cross References. Section 3402 is referred to in sections 3102, 3320, 3401, 3403, 3404, 3407, 3410, 3414 of this title.

§ 3403. Public offering statement; time-share estates.

(a) Definition.--For purposes of this section, "time-share estate" means either:

(1) an "interval estate," meaning a combination of:

(i) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires, coupled with

(ii) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate; or

(2) a "time-span estate," meaning a combination of:

(i) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate, coupled with

(ii) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein.

(b) General rule.--If the declaration provides that ownership or occupancy of any units are or may be owned in time-shares, the public offering statement shall contain or disclose in addition to the information required by section 3402 (relating to public offering statement; general provisions):

(1) The total number of units in which time-share estates may be created.

(2) The total number of time-share estates that may be created in the condominium.

(3) The projected common expense assessment for each time-share estate and whether those assessments may vary seasonally.

(4) A statement of any services not reflected in the budget which the declarant provides, or expenses which he pays, and which he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for each time-share estate.

(5) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit.

(6) The extent to which a suit for partition may be maintained against a unit owned in time-share estates.

(7) The extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

(8) A statement in at least ten-point bold face type, appearing on the first page of the public offering statement, that:

(i) Within seven days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, the purchaser may recover from the declarant damages as provided in section 3406(c) (relating to purchaser's right to cancel) and a description of such damages.

(iii) If a purchaser receives the public offering statement more than seven days before signing a contract, he cannot cancel the contract.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3403 is referred to in sections 3102, 3205, 3401 of this title.

§ 3404. Public offering statement; condominiums containing conversion buildings.

(a) General rule.--The public offering statement of a condominium containing a conversion building must contain, in addition to the information required by section 3402 (relating to public offering statement; general provisions):

(1) A statement by the declarant, based on a report prepared by an independent registered architect or professional engineer:

(i) describing the age and present condition and, if known or reasonably ascertainable, the dates of construction, installation and major repairs of all structural components and mechanical and electrical installations, including, but not limited to, roofs, plumbing, heating, air conditioning and elevators, material to the use and enjoyment of the condominium; and

(ii) describing the results of the inspection of the units and common elements required pursuant to section 3411(c) (relating to warranty against structural defects) for visible conditions that adversely affect the health or safety of residential occupants. The statement should also state the extent to which the report by the architect or professional engineer is based upon a visual inspection of the units as well as the common elements.

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) including the current replacement costs of such item.

(3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(4) A statement by the declarant, based on a report prepared by an independent licensed exterminating company, describing the presence at the condominium of any visible pest conditions dangerous to health and safety, such as the presence of insects and rodents dangerous to health or safety, and outlining actions taken or to be taken to eliminate the existence of pest conditions dangerous to health or safety.

(b) Applicability of section.--This section applies only to units that may be occupied for residential use.
(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3404 is referred to in sections 3102, 3401, 3411 of this title.

§ 3405. Public offering statement; condominium securities.

If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this subpart if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not, in and of itself, a security under the provisions of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, and the offer and sale of condominium units in accordance with the requirements of this chapter shall not also be subject to the registration requirements of sections 201 or 301 of the Pennsylvania Securities Act of 1972 or the promotional real estate sales requirements of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3405 is referred to in section 3102 of this title.

§ 3406. Purchaser's right to cancel.

(a) General rule.--In cases where delivery of a public offering statement is required under section 3401 (relating to applicability; waiver), a declarant shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto not later than the date the purchaser executes the contract of sale for such unit or, if no contract of sale is executed, 15 days before conveyance of such unit. Unless a purchaser is given the public offering statement, including all the currently effective amendments thereof, within the time period referred to in the preceding sentence, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement and all currently effective amendments thereof, except in the case of the sale of a time-share estate. Unless a purchaser of a time-share estate is given the public offering statement, including all the currently effective amendments thereof, more than seven days before the purchaser executes the contract for the purchase of such unit or, if no contract of sale is executed, seven days before conveyance of such unit, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the public offering statement and all currently effective amendments thereof. If a public offering statement is amended after the public offering statement has been received by a purchaser of a unit, the amendment shall be provided to the purchaser promptly after it becomes effective, and, if the amendment materially and adversely affects the rights or obligations, or both, of the purchaser, then the purchaser, before conveyance, may cancel the contract of sale within 15 days, or seven days in case of the sale of a time-share estate, after receiving the amendment.

(b) Method and effect of cancellation.--If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand delivering notice thereof to the declarant, or by mailing notice thereof by prepaid United States mail to the declarant or to his agent for service of process. Cancellation is without penalty and all payments made by the purchaser before cancellation shall be refunded promptly.

(c) Penalty for noncompliance by declarant.--If a declarant fails to provide a purchaser to whom a unit is conveyed with a public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any other relief, is entitled to receive from the declarant an amount equal to 5% of the sales price of the unit up to the maximum of \$2,000, or actual damages, whichever is the greater amount. A minor omission or error in the public offering statement or an amendment thereto, that is not willful, shall entitle the purchaser to recover only actual damages, if any.
(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3406 is referred to in sections 3402, 3403 of this title.

§ 3407. Resales of units.

(a) Information supplied by unit owner.--In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than the plats and plans), the bylaws, the rules or regulations of the association and a certificate containing:

- (1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit.

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and any surplus fund credits to be applied with regard to the unit pursuant to section 3313 (relating to surplus funds).

(3) A statement of any other fees payable by unit owners.

(4) A statement of any capital expenditures proposed by the association for the current and two next succeeding fiscal years.

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified project.

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.

(7) The current operating budget of the association.

(8) A statement of any judgments against the association and the status of any pending suits to which the association is a party.

(9) A statement describing any insurance coverage provided for the benefit of unit owners.

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements or knowledge of the existence of any hazardous conditions pursuant to section 3402(a)(26) (relating to public offering statement; general provisions) or with respect to the unit, the limited common elements assigned thereto or any other portion of the condominium.

(12) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(13) A statement as to whether the declaration provides for cumulative voting or class voting.

(14) A statement as to whether an agreement to terminate the condominium has been submitted to the unit owners for approval and remains outstanding.

(15) A statement of whether the condominium is a master association or is part of a master association or could become a master association or part of a master association.

(16) A statement describing which units, if any, may be owned in time-share estates and the maximum number of time-share estates that may be created in the condominium.

(17) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the condominium and, if so, the information describing such right which was supplied by the declarant pursuant to section 3205(13) (relating to contents of declaration; all condominiums), if any.

(b) Information supplied by association.--The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information and copies of documents necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) Liability for error or inaction by association.--A purchaser is not liable for any unpaid assessment or fee greater

than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) Purchase contract voidable.--The purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days)

2004 Amendment. Act 191 amended subsec. (c) and added subsec. (d).

Cross References. Section 3407 is referred to in sections 3102, 3302, 3316, 3401, 7302 of this title.

§ 3408. Escrow of deposits.

Any deposit (which shall not include any installment payment under an installment sales contract nor payments specifically stated in a sales contract to be in payment of or on account of extras, changes or custom work) made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this Commonwealth by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution or a licensed title insurance company, in an account, or in the form of a certificate of deposit, designated solely for that purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:

(1) delivered to the declarant at closing, or in the case of the sale of a unit pursuant to an installment sales contract, upon the expiration of 30 days from the date of occupancy of the unit;

(2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or

(3) refunded to the purchaser.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days)

Cross References. Section 3408 is referred to in section 3402 of this title.

§ 3409. Release of liens.

(a) General rule.--Before conveying a unit, other than by deed in lieu of foreclosure, to a purchaser other than a declarant, a declarant shall record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien adequate in nature and amount. This subsection does not apply to any convertible or withdrawable real estate in which no unit has been conveyed.

(b) Other liens.--Before conveying real estate to the association, the declarant shall have the real estate released from:

(1) All liens, the foreclosure of which would deprive unit owners of any right of access to or easements of support of their units.

(2) All other liens, including, without limitation, real estate taxes, on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (b)(2).

§ 3410. Condominiums containing conversion buildings.

(a) Notice of conversion.--The declarant of every condominium containing one or more conversion buildings shall give each of the residential tenants and residential subtenants, if any, lawfully in possession of a unit or units in a conversion building or buildings, a conversion notice no later than one year before the declarant will require such residential tenant and residential subtenant to vacate. The conversion notice must set forth generally the rights of residential tenants and residential subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States certified or registered mail return receipt requested to the residential tenant and residential subtenant at the address of the unit and not more than one other mailing address provided by a residential tenant. Every notice shall be accompanied by a public offering statement concerning the proposed sale of condominium units within such building or buildings. Except as otherwise provided in subsection (f), no residential tenant or residential subtenant in a conversion building may be required by the declarant to vacate the unit he leases earlier than one year after the conversion notice date, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises and the terms of the tenancy, including those terms that apply to a period occurring in whole or in part after the conversion notice date, may not be altered, but may be enforced, during that period. Failure of a declarant to give notice to a residential tenant or residential subtenant entitled to such notice pursuant to this subsection is a defense to an action for possession against such residential tenant or residential subtenant.

(b) Offer to tenant to purchase unit.--For six months after the conversion notice date, the declarant shall offer to convey each unit or proposed unit occupied for residential use in a conversion building to the tenant who leases that unit. If the tenant fails to purchase his unit during that six-month period, the declarant may not offer to dispose of an interest in that unit during the following six months at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection shall not apply to any rental unit which immediately prior to the conversion notice date was restricted or devoted exclusively to nonresidential use or the boundaries of which unit, after the creation of the condominium, will not substantially conform to the boundaries of such unit on the conversion notice date.

(c) Effect of wrongful conveyance.--If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b) but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

(d) Notice to vacate.--If a conversion notice specifies a date by which a unit or proposed unit must be vacated, the conversion notice also constitutes a notice of termination of the tenant's lease, subject to revocation in accordance with subsection (i), and a notice to quit specified by section 501 of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951.

(e) Improper lease termination prohibited.--

(1) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(2) Nothing in this section or in any lease shall prohibit a residential tenant, after receiving notice pursuant to subsection (a), from terminating any lease without any liability for such termination provided such tenant gives the building owner 90 days' written notice of the intent to terminate the lease.

(3) The declarant or owner of any proposed conversion condominium shall not engage in any activity of any nature which would coerce the tenant into terminating any lease, including but not limited to stampeding, harassing tenants or withholding normal services or repairs.

(f) Units leased to senior citizens and disabled persons.--

(1) For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, on the conversion notice date, lawfully occupies a unit in a conversion building as his principal residence and is 62 years of age or older or is disabled, and has occupied the unit for at least two years. For the purpose of this subsection, a person shall be deemed to be "disabled" if on the conversion notice date he is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impediment, including, but not limited to, blindness.

(2) Within 60 days after the conversion notice date, any tenant, or subtenant, in possession of a unit, who believes that he is an eligible tenant or subtenant shall so notify the declarant and shall provide the declarant with proof of his eligibility. Any eligible tenant or subtenant who has established his eligibility as aforesaid shall be entitled to remain in possession of his unit for two years following the conversion notice date, notwithstanding any prior termination date in his lease, except by reason of nonpayment of rent, waste or conduct that disturbs other occupants' peaceful enjoyment of the condominium, and the terms of the tenancy, including terms that apply to a time period after the conversion notice date, may not be altered, but may be enforced, during the time period between the original lease termination date and the expiration of this two-year period except as is otherwise provided in paragraph (3).

(3) The monthly rental payable by the tenant during the time period commencing upon the later to occur of the original lease termination date or the first anniversary of the conversion notice date and ending upon the expiration of the two-year period described in paragraph (2) shall be the same monthly rental as was payable for the month immediately preceding the original lease termination date, except that, at the landlord's option, such monthly rental may be increased by the lesser of 5% of such monthly rental or the same percentage increase as the percentage increase, if any, in the Consumer Price Index as calculated and published by the United States Department of Labor for the six-month time period commencing on the first day of the first full calendar month after the conversion notice date.

(4) Failure of a declarant to comply with the provisions of this subsection is a defense to an action for possession.

(g) Tenant meetings; open to the public.--With respect to any conversion building containing one or more units then occupied for residential use, at least 30 days before the conversion notice date, the declarant shall hold a tenant

meeting open to the public in the municipality where the proposed conversion building is located at a place and time convenient to the persons who may be directly affected by the conversion. At least ten days' notice of the time and place of the meeting shall be given to residential tenants and subtenants in lawful possession of their units in the same manner as is required for the giving of the conversion notice and to the general public by a notice in a newspaper of general circulation in the municipality in which the condominium is located, except that no notice to the general public need be given with respect to conversion buildings as to which the provisions of section 3402(b) (relating to public offering statement; general provisions) are applicable. At such meeting, representatives of the declarant shall briefly describe the following and may, but shall not be required to, discuss other matters:

(1) The rights and obligations of tenants and subtenants pursuant to this section.

(2) Improvements, if any, then planned to be made to the condominium by the declarant.

(3) The anticipated approximate range of initial unit sales prices. Specific unit sales prices need not, however, be provided.

(4) The anticipated approximate range of estimated monthly common expenses for various types of units, however, specific per unit estimates need not be provided.

(h) Community development grants.--If Federal funds under Title I of the Community Development Act of 1974 have been used to finance the rehabilitation of multifamily rental housing, with the intent that such housing subsequent to the rehabilitation is to be used for residential rental purposes, such housing shall not be converted to a condominium for a period of ten years from the date the rehabilitation is completed.

(i) Revocation.--A declarant may subsequently revoke a conversion notice if the declarant has expressly reserved the right of revocation in the conversion notice and if the notice of revocation:

(1) is given prior to the conveyance of any unit in the condominium occurring after the conversion notice date other than a unit or units conveyed to a successor declarant or as a result of foreclosure of a mortgage on the unit or a deed in lieu thereof;

(2) is given in the same manner as is required for the giving of the conversion notice; and

(3) is given to all persons who were entitled to receive the conversion notice and who continue to be in lawful occupancy at the time such notice of revocation is given.

The giving of a notice of revocation revokes all rights granted under this section, but does not revoke the rights granted to residential tenants under subsection (a) or (f), and such rights shall be deemed to have been incorporated in each residential tenant's lease.

(j) Waiver of purchase rights.--Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant may waive his right to purchase a unit pursuant to subsection (b) if the waiver is in writing, is acknowledged and is given in consideration of:

(1) an extension of the term of the tenant's tenancy and right of occupancy under this subpart beyond the time period required by subsection (a) or (f) as applicable;

(2) the tenant entering into an agreement to purchase another unit in the condominium; or

(3) all occupants of the unit making alternative living arrangements.

(k) Alteration of terms of tenancy.--Notwithstanding any provisions of subsection (a) or (f), the terms of the tenancy of a tenant or subtenant may be altered with the express written consent of that tenant or subtenant, and such altered terms shall then be the terms of tenancy referred to in this section.

(l) Application of section.--The provisions of this section shall apply only with respect to conversion buildings in which one or more residential tenants or residential subtenants are in lawful occupancy on the conversion notice date and the only tenants who are entitled to exercise the rights granted under this section are residential tenants or residential subtenants:

(1) who are in lawful occupancy of conversion building on the date the declarant gives the conversion notice; or

(2) who commence their tenancy after the notice of conversion is given to the other residential tenants without having been notified in writing, at or prior to the commencement of their tenancy, that the property is then a condominium and that they are not entitled to the rights granted under this section.

Such rights continue only so long as the lawful occupancy of the tenant or subtenant continues.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Nov. 30, 2004, P.L.1509, No.191, eff. 60 days)

2004 Amendment. Act 191 amended subsecs. (d) and (j)(1).

Cross References. Section 3410 is referred to in section 3103 of this title.

§ 3411. Warranty against structural defects.

(a) Definition.--As used in this section, "structural defects" means those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) General rule.--A declarant warrants against structural defects in each of the units for two years from the date each is conveyed to a bona fide purchaser, and all of the common elements for two years. Any conveyance of a unit during the two-year warranty period shall be deemed to transfer to the purchaser all of the declarant's warranties created under this section. The two years shall begin as to each of the common elements whenever the common element has been completed or, if later:

(1) as to any common element within any additional real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser;

(2) as to any common element within any convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; and

(3) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed to a bona fide purchaser.

(c) Condominiums containing conversion buildings.--A declarant of a condominium containing one or more conversion buildings warrants as follows:

(1) That there are no structural defects in components installed anywhere in the condominium by or on behalf of the

declarant or in work done or improvements made by or on behalf of the declarant anywhere in the condominium.

(2) That all units and common elements in each conversion building have been inspected for visible structural and mechanical defects and for other visible conditions that adversely affect the health or safety of residential occupants, as required by section 3404(a)(1) (relating to public offering statement; condominiums containing conversion buildings), except that no such inspection is required of any unit if the tenant or other lawful occupant of the unit does not permit such inspection to be conducted.

(3) That any such defects and other visible conditions found have been repaired.

The warranties set forth in subsection (b) shall be applicable to any units and common elements that are located within a building that contains or comprises one or more units and is not a conversion building. Otherwise, such a declarant may offer the units, common elements, or both, in an "as is" condition. The declarant of a condominium containing any conversion buildings may also give a more extensive warranty in writing. The times at which the warranties required by this subsection commence and the duration of such warranties shall be as provided in subsection (b).

(d) Exclusion or modification of warranty.--Except with respect to a purchaser of a unit for residential use, the warranty against structural defects:

(1) may be excluded or modified by agreement of the parties; and

(2) is excluded by expression of disclaimer, such as "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(e) Limitation of actions.--No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins, provided, however, that the limitation period affecting a right of action by the association under this section shall be six years after the warranty begins or two years after the unit owners elect an executive board under section 3303(e) (relating to executive board members and officers), whichever is later.
(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (e).

Cross References. Section 3411 is referred to in sections 3320, 3401, 3404 of this title.

§ 3412. Effect of violations on rights of action.

If a declarant or any other person subject to this subpart violates any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of the subpart and, if appropriate, the prevailing party may be entitled to an award of costs and reasonable attorney fees.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

Cross References. Section 3412 is referred to in section 3102 of this title.

§ 3413. Labeling of promotional material.

If any improvement contemplated in a condominium is required by section 3210(b)(3) (relating to plats and plans) to be labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

§ 3414. Declarant's obligation to complete and restore.

(a) Completing improvements.--The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to section 3210 (relating to plats and plans).

(b) Repair and restoration.--The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 3211 (relating to conversion and expansion of flexible condominiums), 3212 (relating to withdrawal of withdrawable real estate), 3217 (relating to declarant's offices, models and signs) and 3218 (relating to easement to facilitate completion, conversion and expansion).

(c) Substantial completion prerequisite to conveyance.--A unit which is part of or constitutes a structure shall not be conveyed to a person other than a successor to any special declarant rights unless all structural components and common element mechanical systems of the structure containing or constituting such unit or units are substantially completed to the extent required of declarant so as to permit the use of such unit or units and any limited common elements appurtenant thereto for their intended use. Such substantial completion shall be evidenced by a recorded certification of completion executed by an independent registered surveyor, architect or professional engineer with regard to any such structure.

(d) Substantial completion of unit.--No interest in a unit shall be conveyed until the unit is substantially completed in accordance with the descriptions set forth in both the declaration pursuant to section 3205(4) (relating to contents of declaration; all condominiums) and in the public offering statement pursuant to section 3402(a) (relating to public offering statement; general provisions) as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or professional engineer.

(e) Construction of section.--Nothing contained in this subpart shall prevent the offering for sale of a unit or interest in a unit or the execution of any agreement to sell and purchase a unit or any interest in a unit (as opposed to actual conveyance) prior to the completion of the unit or any other portion of the condominium.

(Dec. 18, 1992, P.L.1279, No.168, eff. 45 days; July 2, 2013, P.L.204, No.37, eff. imd.)

2013 Amendment. Act 37 amended subsec. (c).

Cross References. Section 3414 is referred to in section 3402 of this title.

SUBPART C
COOPERATIVES

Chapter

41. General Provisions

42. Creation, Alteration and Termination of Cooperatives

- 43. Management of Cooperatives
- 44. Protection of Cooperative Interest Purchasers

Enactment. Subpart C was added December 18, 1992, P.L.1426, No.176, effective in 60 days.

CHAPTER 41

GENERAL PROVISIONS

Sec.

- 4101. Short title of subpart.
- 4102. Applicability of subpart.
- 4103. Definitions.
- 4104. Variation by agreement.
- 4105. Property classification of cooperative interests.
- 4106. Applicability of local ordinances, regulations and building codes.
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- 4108. Supplemental general principles of law applicable.
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- 4112. Obligation of good faith.
- 4113. Remedies to be liberally administered.

Enactment. Chapter 41 was added December 18, 1992, P.L.1426, No.176, effective in 60 days.

§ 4101. Short title of subpart.

This subpart shall be known and may be cited as the Real Estate Cooperative Act.

§ 4102. Applicability of subpart.

(a) General rule.--This subpart applies to all cooperatives created within this Commonwealth after the effective date of this subpart, but, if such a cooperative contains only units restricted to nonresidential use, it is subject only to sections 4106 (relating to applicability of local ordinances, regulations and building codes) and 4107 (relating to eminent domain) unless the declaration provides that the entire subpart is applicable.

(b) Existing cooperatives.--Except as provided in subsection (c), sections 4106, 4107, 4203 (relating to construction and validity of declaration and bylaws), 4219 (relating to master associations), 4220 (relating to merger or consolidation of cooperatives), 4302(a)(1) through (6) and (11) through (17) (relating to powers of association), 4311 (relating to tort and contract liability), 4315 (relating to lien for assessments), 4317 (relating to association records), 4319 (relating to termination of cooperative interest), 4409 (relating to resales of cooperative interests) and 4415 (relating to effect of violations on rights of action), and section 4103 (relating to definitions) to the extent necessary in construing any of those sections, apply to all cooperatives created in this Commonwealth before the effective date of this subpart, but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate existing provisions of the cooperative documents of those cooperatives. By compliance with the requirements of section 4201 (relating to creation of cooperative ownership), a cooperative created in this Commonwealth before the effective date of this subpart may be made subject to all of the provisions of this subpart, effective as of the date of recordation of the document or documents specified in section

4201, without in any way terminating the cooperative status of the property or in any way affecting any lien or encumbrance on the property, if the terms of such document or documents have been approved by all the persons whose actions would have been required to effect the termination of the cooperative pursuant to its governing documents in effect at the time such approval is given, provided, however, that such action shall not increase the obligations or responsibilities of a declarant, as such and not as a proprietary lessee, without the joinder of the declarant in the document or documents required by section 4201.

(b.1) Retroactivity.--

(1) Sections 4103, 4108 (relating to supplemental general principles of law applicable), 4112 (relating to obligation of good faith), 4216 (relating to amendment of declaration), 4217(g) (relating to termination of cooperative ownership), 4302(a)(8)(i) and (9), 4303(a), (b) and (c) (relating to executive board members and officers), 4307 (relating to upkeep of cooperative), 4314 (relating to assessments for common expenses) and 4316 (relating to other liens affecting cooperative), to the extent necessary in construing any of those sections, apply to all cooperatives created in this Commonwealth before the effective date of this subpart, but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate existing provisions of the cooperative documents of those cooperatives.

(2) Section 4303(d), to the extent necessary in construing that subsection, applies to all cooperatives created in this Commonwealth before the effective date of this subpart, but the subsection applies only with respect to events and circumstances occurring 180 days after the effective date of this subsection and does not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those cooperatives.

(c) Units restricted to nonresidential use.--If a cooperative created within this Commonwealth before the effective date of this subpart contains only units restricted to nonresidential use, it is subject only to sections 4106 and 4107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of subsection (d), in which case all the sections enumerated in subsection (b) apply to that cooperative from the date such amended declaration is recorded as required for a declaration under section 4201.

(d) Amendments to declaration and bylaws.--In the case of amendments to the declaration and bylaws of any cooperative created before the effective date of this subpart:

(1) If the result accomplished by the amendment was permitted by law prior to this subpart, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or may be made pursuant to this subpart.

(2) If the result accomplished by the amendment is permitted by this subpart and was not permitted by law prior to this subpart, the amendment may be made pursuant to this subpart.

An amendment to the declaration or bylaws authorized by this subsection to be made under this subpart must be adopted in conformity with applicable law and with the procedures and requirements specified by the declaration and bylaws being

amended. If any such amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person.

(e) Cooperative interests outside Commonwealth.--This subpart does not apply to cooperative interests located outside this Commonwealth, but the public offering statement provisions (sections 4401 through 4408) apply to all cooperative interests offered within this Commonwealth for which either the contract for disposition is executed by any party within this Commonwealth or the disposition is effectuated within this Commonwealth unless exempt under section 4401(b) (relating to applicability; waiver).

(f) Liens and security interests.--The enactment of this subpart shall not affect any lien upon a cooperative or any lien upon or security interest in any property of the association or in any cooperative interest if such lien or security interest shall have been perfected prior to the effective date of this subpart.

(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days)

2004 Amendment. Act 190 added subsec. (b.1).

Cross References. Section 4102 is referred to in section 4403 of this title.

§ 4103. Definitions.

Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affiliate of a declarant." Any person who controls, is controlled by or is under common control with a declarant.

(1) A person "controls" a declarant if the person:

(i) is a general partner, officer, director or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20% of the capital of the declarant.

(2) A person "is controlled by" a declarant if the declarant:

(i) is a general partner, officer, director or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(3) Control does not exist if the powers described in paragraph (1) or (2) are held solely as security for an obligation and are not exercised.

"Allocated interests." The common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Alternative dispute resolution." A procedure for settling a dispute by means other than litigation, such as arbitration or mediation.

"Association" or "proprietary lessees' association." The proprietary lessees' association organized under section 4301 (relating to organization of association).

"Common elements." All portions of a cooperative other than the units.

"Common expense liability." The liability for common expenses allocated to each cooperative interest pursuant to section 4207 (relating to allocation of ownership interests, votes and common expense liabilities).

"Common expenses." Expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"Conversion building." A building that, at any time before the conversion notice date with respect to a cooperative in which that building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Conversion notice." The notice to be given to certain tenants or subtenants by the terms of section 4412(a) (relating to cooperatives containing conversion buildings).

"Conversion notice date." The date on which the notice is placed in the United States mail or is delivered to the unit leased by the recipient, depending upon whether the conversion notice is mailed or hand delivered.

"Cooperative." Real estate owned by an association, each of whose members is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest." An ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For the purposes of this subpart, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to section 4207 (relating to allocation of ownership interests, votes and common expense liabilities) until that cooperative interest has been created and conveyed to another person.

"Declarant." Any person or group of persons acting in concert who:

(1) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; or

(2) reserves or succeeds to any special declarant right.

"Declaration." Any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights." Any right or combination of rights reserved by a declarant in the declaration to:

(1) add real estate to a cooperative;

(2) create units, common elements or limited common elements within a cooperative;

(3) subdivide units or convert units into common elements; or

(4) withdraw real estate from a cooperative.

"Dispose" or "disposition." A voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest. The term does not include the creation, transfer, satisfaction or release of a security interest.

"Executive board." The body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number." A symbol or address that identifies only one unit in a cooperative.

"Immediate family." A parent, spouse, child, brother or sister.

"Independent reviewer." A person who is selected by the executive board of a cooperative and satisfies all of the following:

(1) Holds a certificate as a certified public accountant issued by the Commonwealth, is licensed to practice law in this Commonwealth or is a vote management system.

(2) Is not a proprietary lessee of the cooperative, directly or indirectly.

(3) Has no immediate family relationship with a proprietary lessee of the cooperative or the cooperative manager.

(4) Has no financial interest shared with a proprietary lessee of the cooperative or the cooperative manager.

(5) If compensated by the declarant, a director, the association or the cooperative manager, has disclosed the terms of the compensation to all proprietary lessees of the cooperative at a scheduled meeting.

"Leasehold cooperative." A cooperative in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element." A portion of the common elements allocated by the declaration or by operation of section 4202(2) or (4) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"Limited equity cooperative." A cooperative whose declaration and bylaws impose a restriction or limitation, in a specified amount or in an amount determined pursuant to a specified formula, upon the consideration that may be paid to the transferor of a cooperative interest. The formula may not include the fair market value of the cooperative interest as a factor in establishing the restriction or limitation.

"Limited equity cooperative association." An association for a limited equity cooperative.

"Low-income and moderate-income persons." Persons who are members of households and whose incomes are less than 80% of the median household income in the area which the cooperative is located, as established by the United States Department of Housing and Urban Development or a successor organization, for the smallest geographic area which includes the cooperative and for which such income data is established by such organization.

"Master association." An organization described in section 4219 (relating to master associations), whether or not it is also an association described in section 4301 (relating to organization of association).

"Offer" or "offering." Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation or in any broadcast medium to the general public of a cooperative not located in this Commonwealth is not an offer or offering if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Original lease termination date." The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of such lease or sublease after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date.

"Person." A natural person, corporation, business trust, estate, trust, general or limited partnership, association, joint venture, government, governmental subdivision or agency, other legal or commercial entity or any combination of the foregoing. In the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease." An agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee." A person who owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to section 4207 (relating to allocation of ownership interests, votes and common expense liabilities) until that cooperative interest has been created and conveyed to another person.

"Proprietary lessee in good standing." A proprietary lessee who is current in payment of assessments and fines, unless the assessments or fines are directly related to a complaint filed with the Bureau of Consumer Protection in the Office of Attorney General regarding section 4308 (relating to meetings), 4309 (relating to quorums), 4310 (relating to voting; proxies) or 4317 (relating to association records).

"Purchaser." Any person, other than a declarant or a person in the business of selling cooperative interests for his own account, who, by means of a disposition, acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate." Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

"Residential purposes." Use for dwelling or recreational purposes or both.

"Residential tenant" or "residential subtenant." A tenant or subtenant, respectively, who is a natural person lawfully occupying real estate for residential use.

"Security interest." An interest in real or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, security agreement, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights." Rights reserved for the benefit of a declarant to:

(1) Complete improvements described in the public offering statement (section 4403(a)(2)).

(2) Exercise any development right (section 4209).

(3) Maintain sales offices, management offices, signs advertising the cooperative and models (section 4214).

(4) Use easements through the common elements for the purpose of making improvements within the cooperative or within real estate which may be added to the cooperative (section 4215).

(5) Make the cooperative part of a larger cooperative or group of cooperatives (section 4220).

(6) Make the cooperative subject to a master association (section 4219).

(7) Appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (section 4303(d)).

"Time share." A right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion thereof.

"Unit." A physical portion of the cooperative designated for separate occupancy under a proprietary lease.

"Vote management system." A third-party vendor who operates a digital or subscription service that securely manages the conduct of elections and voting procedures.

(May 4, 2018, P.L.96, No.17, eff. 60 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added the defs. of "immediate family," "independent reviewer" and "vote management system."

2018 Amendment. Act 17 added the defs. of "alternative dispute resolution" and "proprietary lessee in good standing."

Cross References. Section 4103 is referred to in sections 4102, 4205, 4304, 7302, 7402 of this title; section 8401 of Title 53 (Municipalities Generally).

§ 4104. Variation by agreement.

Except as expressly provided in this subpart, provisions of this subpart may not be varied by agreement, and rights conferred by this subpart may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this subpart or the declaration.

§ 4105. Property classification of cooperative interests.

A cooperative interest shall be deemed to be a separate leasehold interest in real estate for all purposes except as is otherwise provided in section 4321(b) (relating to limited equity cooperatives).

Cross References. Section 4105 is referred to in section 4321 of this title.

§ 4106. Applicability of local ordinances, regulations and building codes.

A zoning, subdivision, building code or other real estate tax or use law, ordinance or regulation may not prohibit the cooperative form of ownership or impose any requirement upon a cooperative which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate tax or use law, ordinance or regulation except as is otherwise provided in section 4321(f) (relating to limited equity cooperatives).

Cross References. Section 4106 is referred to in sections 4102, 4321 of this title.

§ 4107. Eminent domain.

(a) **General rule.**--If a unit is acquired by eminent domain or if part of a unit is acquired by eminent domain leaving the proprietary lessee with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the proprietary lessee for the value of his cooperative interest. Upon acquisition of all of a unit by eminent domain, unless the decree otherwise provides, that cooperative interest's allocated interests are automatically reallocated to the remaining cooperative interests in proportion to the respective allocated interests of those cooperative interests before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) **Acquisition of part of a unit.**--Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the proprietary lessee for the reduction in value of his cooperative interest. Upon acquisition, unless the decree otherwise provides:

(1) That cooperative interest's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration.

(2) The portion of the allocated interests divested from the cooperative interest of which the partially acquired unit is a part are automatically reallocated to that cooperative interest and the remaining units in proportion to the respective allocated interests of those cooperative interests before the taking, with the cooperative interest of which the partially acquired unit is a part participating in the reallocation on the basis of its reduced allocated interests.

(c) **Acquisition of part of common elements.**--If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the proprietary lessees of the units to which that limited common element was allocated at the time of acquisition.

(d) **Recording court decree.**--The court decree shall be recorded in every county in which any portion of the cooperative is located.

Cross References. Section 4107 is referred to in sections 4102, 4206, 4209, 4216, 4217, 4313 of this title.

§ 4108. Supplemental general principles of law applicable.

The principles of law and equity, including the law of corporations and nonprofit corporations and unincorporated associations, the law of real property and the law relative to the capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance or other validating or invalidating cause supplement the provisions of this subpart, except to the extent inconsistent with this subpart.

Cross References. Section 4108 is referred to in section 4102 of this title.

§ 4109. Construction against implicit repeal.

This subpart being a general statute intended as a unified coverage of its subject matter, no part of it shall be construed to be repealed by subsequent legislation if that construction can reasonably be avoided.

§ 4110. Uniformity of application and construction.

This subpart shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart among states enacting it.

§ 4111. Unconscionable agreement or term of contract.

(a) **Powers of court.**--The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may:

- (1) refuse to enforce the contract;
- (2) enforce the remainder of the contract without the unconscionable clause; or
- (3) limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) **Parties may present evidence.**--Whenever it is claimed or appears to the court that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

- (1) The commercial setting of the negotiations.
- (2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors.
- (3) The effect and purpose of the contract or clause.
- (4) If a sale, any gross disparity at the time of contracting between the amount charged for the cooperative interest and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions, but a disparity between the contract price and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§ 4112. Obligation of good faith.

Every contract or duty governed by this subpart imposes an obligation of good faith in its performance or enforcement.

Cross References. Section 4112 is referred to in section 4102 of this title.

§ 4113. Remedies to be liberally administered.

(a) **General rule.**--The remedies provided by this subpart shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this subpart or by other rule of law.

(b) **Judicial enforcement of rights and obligations.**--Any right or obligation declared by this subpart is enforceable by judicial proceeding.

CHAPTER 42
CREATION, ALTERATION AND TERMINATION
OF COOPERATIVES

Sec.

- 4201. Creation of cooperative ownership.
- 4202. Unit boundaries.
- 4203. Construction and validity of declaration and bylaws.
- 4204. Description of units.
- 4205. Contents of declaration.
- 4206. Leasehold cooperatives.
- 4207. Allocation of ownership interests, votes and common expense liabilities.
- 4208. Limited common elements.
- 4209. Exercise of development rights.
- 4210. Alterations of units.
- 4211. Relocation of boundaries between adjoining units.
- 4212. Subdivision of units.
- 4213. Easement for encroachments.
- 4214. Declarant's office, models and signs.
- 4215. Easement rights.
- 4216. Amendment of declaration.
- 4217. Termination of cooperative ownership.
- 4218. Rights of secured lenders and secured creditors.
- 4219. Master associations.
- 4220. Merger or consolidation of cooperatives.
- 4221. Method for transferring a cooperative interest.

Enactment. Chapter 42 was added December 18, 1992, P.L.1426, No.176, effective in 60 days.

§ 4201. Creation of cooperative ownership.

(a) General rule.--A cooperative may be created pursuant to this subpart only by either of the following:

(1) Recording a declaration executed in the same manner as a deed and subsequently recording an instrument that conveys or leases to the association the real estate that is to be included in the cooperative, which conveyance or lease is subject to the declaration.

(2) Recording an instrument conveying or leasing to the association the real estate to be included in the cooperative, which instrument also includes all provisions required to be in a declaration by section 4205 (relating to contents of declaration) and which instrument shall then be deemed to be a declaration for all purposes of this subpart.

(b) Execution of instrument.--The instrument by which the conveyance or lease to the association of the real estate to be in the cooperative is to be effected shall be executed and acknowledged by the association as well as by all persons having an interest in the real estate to be included in the cooperative and whose interest is being conveyed to or subjected to a lease in favor of the association.

(c) Recording instruments.--The declaration and any separate instrument of conveyance or lease of the real estate to the association must be recorded in every county in which any portion of the cooperative is located and must be indexed in the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of every person executing the declaration and such separate instrument.

Cross References. Section 4201 is referred to in sections 4102, 4301 of this title.

§ 4202. Unit boundaries.

Except as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint,

finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Cross References. Section 4202 is referred to in sections 4103, 4205, 4208, 4302 of this title.

§ 4203. Construction and validity of declaration and bylaws.

(a) **Provisions severable.**--All provisions of the declaration and bylaws are severable.

(b) **Application of rule against perpetuities.**--The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws or rules and regulations adopted pursuant to section 4302(a)(1) (relating to powers of association).

(c) **Conflict between declaration and bylaws.**--In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this subpart.

(d) **Effect of noncompliance on title to unit.**--Title to a cooperative interest is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this subpart. Whether a substantial failure impairs marketability is not affected by this subpart.

Cross References. Section 4203 is referred to in section 4102 of this title.

§ 4204. Description of units.

A description of a unit which sets forth the name of the cooperative, the recording data for the declaration, the county or counties in which the cooperative is located and the identifying number of the unit is a legally sufficient description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws. Proprietary leases and memoranda or short forms thereof as well as all instruments of transfer of cooperative interests and all instruments creating security interests in cooperative interests may be recorded in the same records as are maintained by the recorder for the recording of like instruments and, if recorded, shall be indexed by the recorder in the same manner as like instruments are recorded.

Cross References. Section 4204 is referred to in section 4221 of this title.

§ 4205. Contents of declaration.

(a) General rule.--The declaration for a cooperative must contain:

(1) The name of the cooperative, which must include the word "cooperative" or be followed by the words "a cooperative" and the name of the association.

(2) The name of every county in which any part of the cooperative is situated.

(3) A legally sufficient description of the real estate included in the cooperative.

(4) A statement of the maximum number of units which the declarant reserves the right to create.

(5) A description of each unit created by the declaration, either by reference to plats and plans that are included in or attached to the declaration or by a verbal description which shall include each unit's identifying number, its size or number of rooms and its location within a building if it is within a building containing more than one unit.

(6) A description of any limited common elements, other than those specified in section 4202(2) and (4) (relating to unit boundaries).

(7) A description of any real estate, except real estate subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in section 4202(2) and (4), together with a statement that they may be so allocated and a description of the method by which the allocations are to be made.

(8) A description of any development rights (section 4103) and other special declarant rights (section 4103) reserved by the declarant.

(9) An allocation to each cooperative interest of the allocated interests in the manner described in section 4207 (relating to allocation of ownership interests, votes and common expense liabilities).

(10) Any restrictions on:

(i) Use and occupancy of the units.

(ii) Alienation or encumbering of the cooperative interests.

(iii) The amount for which a cooperative interest may be sold or the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative.

(11) The recording data for recorded encumbrances, easements and licenses appurtenant to or included in the cooperative or to which any portion of the cooperative is or may become subject.

(12) If all or any of the units are or may be owned in time-share estates, which units may be owned in time-share estates and the maximum number of time-share estates that may be created in the cooperative, it being intended that time-share estates shall not be permitted except if and to the extent expressly authorized by the declaration.

(13) All matters required by sections 4206 (relating to leasehold cooperatives), 4207 (relating to allocation of ownership interests, votes and common expense liabilities), 4208 (relating to limited common elements), 4214 (relating to declarant's office, models and signs) and 4303(d) (relating to executive board members and officers).

(14) Any items required to be included in all proprietary leases for the cooperative.

(15) If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.

(16) Any fees or charges to be paid by proprietary lessees, currently or in the future, for the use of the common elements, limited common elements and any other facilities related to the cooperative.

(b) Reservation of development rights.--The declaration for a cooperative wherein development rights (section 4103) are reserved by the declarant must also contain:

(1) A statement of the time limit, not exceeding seven years after the recording of the declaration, when all development rights will lapse, together with a statement of any circumstances that will terminate the development rights before the expiration of the time limit.

(2) A statement of any limitations on any development rights, other than limitations created by or imposed pursuant to law, or else a statement that there are no such limitations.

(3) A statement of the extent to which the allocated interests may be increased or decreased by the exercise of development rights, including the formulas to be used for those reallocations.

(4) Legally sufficient descriptions of the real estate to which each of the development rights applies.

(5) If development rights may be exercised with respect to different portions of any real estate subject to development rights at different times, a statement to that effect together with:

(i) either a statement fixing the boundaries of those portions and regulating the order in which they may be subjected to the exercise of such development rights or a statement that no assurances are made in those regards; and

(ii) a statement as to whether, if development rights are exercised with respect to any portion of real estate, any development rights with respect to all or any particular portion of that or any other real estate must be exercised.

(6) A statement of:

(i) the maximum number of units that may be created within any real estate subject to development rights or within any portion of such real estate, the boundaries of which are fixed pursuant to paragraph (5);

(ii) how many of those units will be restricted exclusively to residential use; and

(iii) the maximum number of units per acre or per specified volume of space that may be created within any

portions the boundaries of which are not fixed pursuant to paragraph (5).

(7) If any of the units that may be built within any real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of such real estate, of the maximum percentage of the real estate areas or volumes of space and the maximum percentage of the floor areas or volumes of space of all units that may be created therein that are not restricted exclusively to residential use.

(8) A statement of the extent to which any buildings and units that may be erected upon each portion of the real estate subject to development rights will be compatible with the other buildings and units in the cooperative in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(9) A statement that all restrictions in the declaration as described in subsection (a)(10) will apply to units created within any real estate subject to development rights or a statement of any differentiations that may be made as to those units.

(10) General descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the real estate subject to development rights or a statement that no assurances are made in that regard.

(11) A statement of any limitations as to the locations of any buildings or other improvements that may be made within real estate subject to development rights or a statement that no assurances are made in that regard.

(12) A statement that any limited common elements created within any real estate subject to development rights will be of the same general types and sizes as those limited common elements within other parts of the cooperative or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(13) A statement that the proportion of limited common elements to units created within real estate subject to development rights will be approximately equal to the proportion existing within other parts of the cooperative or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(14) A statement of the extent to which any assurances made in the declaration regarding real estate subject to development rights pursuant to paragraphs (5) through (13) apply in the event any development rights are not exercised.

(15) A statement of any other conditions upon or limitations under which the development rights reserved by the declarant may be exercised or will lapse.

(c) Additional matters permitted.--The declaration may contain any other matters the declarant deems appropriate. (Oct. 19, 2018, P.L.551, No.84, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 added subsec. (a)(16).

2018 Amendment. Act 84 added subsec. (a)(15).

Cross References. Section 4205 is referred to in sections 4201, 4206, 4208, 4209, 4217, 4219, 4220, 4409, 4418 of this title.

§ 4206. Leasehold cooperatives.

(a) Recording lease and contents of declaration.--Any lease the expiration or termination of which may terminate the cooperative or reduce its size shall be recorded in the same county or counties where the declaration is recorded. The declaration for any leasehold cooperative shall state in addition to the applicable provisions of section 4205 (relating to contents of declaration):

- (1) The recording data for the lease.
- (2) The date on which the lease is scheduled to expire.
- (3) A legally sufficient description of the real estate subject to the lease.
- (4) Any rights of the proprietary lessees to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have such rights.
- (5) Any rights of the proprietary lessees to remove any improvements within a reasonable time after the expiration or termination of the lease or a statement that they do not have those rights.
- (6) Any rights of the proprietary lessees to renew the lease and the conditions of any renewal or a statement that they do not have those rights.

(b) Merger of leasehold and fee simple interests.--Acquisition of the leasehold interest of any proprietary lessee by the owner of fee simple title to the real estate that is subject to a lease, the expiration or termination of which may limit the cooperative or reduce its size, does not merge the leasehold and fee simple interests unless such owner also acquires the leasehold interests of all proprietary lessees in the leasehold cooperative and all security interests in all such proprietary leases.

(c) Reallocation of interests if number of units reduced.--If the expiration or termination of a lease decreases the number of units in a cooperative, the allocated interests shall be reallocated in accordance with section 4107(a) (relating to eminent domain) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

Cross References. Section 4206 is referred to in sections 4205, 4209, 4216, 4403 of this title.

§ 4207. Allocation of ownership interests, votes and common expense liabilities.

(a) General rule.--The declaration shall allocate an ownership interest in the association and a portion of the votes in the association to each cooperative interest in the cooperative and shall state the formulas used to establish those allocations. Those allocations may not discriminate in favor of cooperative interests owned by the declarant or an affiliate of the declarant. Such formulas may take into account unusual attributes of identified units if the formulas state how the deviation from the normal rule applies to such units.

(b) Addition or withdrawal of units.--If units may be added to or withdrawn from the cooperative, the declaration must state the formulas to be used to reallocate the allocated interests among all cooperative interests included in the cooperative after the addition or withdrawal.

(c) Votes.--The declaration may provide:

- (1) That different allocations of votes shall be made to the cooperative interests on particular matters specified in the declaration.

(2) For cumulative voting only for the purpose of electing members of the executive board.

(3) For class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this subpart, nor may cooperative interests constitute a class because they are owned by a declarant.

(d) Calculations for undivided interests.--Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the cooperative interests must equal one if stated as a fraction or 100% if stated as a percentage. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(e) Transfer without possessory interest void.--Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of the ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Cross References. Section 4207 is referred to in sections 4103, 4205, 4314 of this title.

§ 4208. Limited common elements.

(a) Allocation.--Except for the limited common elements described in section 4202(2) and (4) (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated. The allocation may not be altered without the consent of the proprietary lessees whose units are affected.

(b) Reallocation.--Subject to any provisions of the declaration, a limited common element may be reallocated by any amendment to the declaration executed by the proprietary lessees between or among whose units the reallocation is made. The persons executing the amendment to the declaration shall provide a copy thereof to the association which shall record it. The amendment shall be recorded in the names of the parties and the cooperative.

(c) Common elements not previously allocated.--A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 4205(a) (7) (relating to contents of declaration). The allocation shall be made by amendments to the declaration which shall be recorded by the association in the name of the cooperative.

Cross References. Section 4208 is referred to in sections 4205, 4209, 4216 of this title.

§ 4209. Exercise of development rights.

(a) General rule.--To exercise any development right reserved under section 4205(a) (8) (relating to contents of declaration), the declarant shall prepare, execute and record an amendment to the declaration (section 4216). If the exercise of such development rights causes real estate to be added to a cooperative or withdrawn from a cooperative, the amendment to the declaration shall either convey or refer to the instrument conveying the real estate so added or withdrawn and shall contain a legally sufficient description of the real estate. The amendment to the declaration must also assign an identifying number to each new unit created, if appropriate, and reallocate the allocated interests among all cooperative interests. The amendment must also describe any common elements and any limited

common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 4208 (relating to limited common elements).

(b) Reservation of development rights.--Development rights may be reserved within any real estate added to the cooperative if the amendment adding that real estate includes all matters required by section 4205 or 4206 (relating to leasehold cooperatives), as the case may be. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 4205(b)(1).

(c) Subdivision or conversion of unit.--Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the other cooperative interests as if that unit had been taken by eminent domain (section 4107).

(2) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interests created by the subdivision in any reasonable manner prescribed by the declarant.

(d) Withdrawal of real estate.--If the declaration provides, pursuant to section 4205(a)(8), that all or a portion of the real estate is subject to the development right of withdrawal:

(1) If all of the real estate is subject to withdrawal and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a cooperative interest has been conveyed to a purchaser.

(2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a cooperative interest in the portion has been conveyed to a purchaser.

Cross References. Section 4209 is referred to in sections 4103, 4216, 4302, 4417 of this title.

§ 4210. Alterations of units.

Subject to the provisions of the declaration, section 4321(c) (relating to limited equity cooperatives) and other provisions of law, a proprietary lessee:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen support of any portion of the cooperative.

(2) May not change the common elements or the exterior appearance of a unit without permission of the association.

(3) After acquiring a cooperative interest of which an adjoining unit or an adjoining part of an adjoining unit is a part, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the cooperative. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

Cross References. Section 4210 is referred to in sections 4321, 4417 of this title.

§ 4211. Relocation of boundaries between adjoining units.

(a) **General rule.**--Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be reallocated by an amendment to the declaration upon application to the association by the proprietary lessees of those units. If the proprietary lessees of the adjoining units have specified a reallocation between their cooperative interests of their common interests, votes in the association and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable or are inconsistent with any restrictions on such reallocation that may be set forth in the declaration, the association shall prepare and record an amendment to the declaration that identifies the units involved, states the reallocations and shows or describes, by plans or otherwise, the altered boundaries between adjoining units and any changes in their sizes and identifying numbers.

(b) **Execution and recording of amendment.**--The amendment to the declaration shall be executed by the proprietary lessees whose units are being changed and by the association and upon recordation shall be indexed in the name of both lessees as well as the association in the grantor and grantee indexes. The amendment shall be prepared and recorded at the expense of the proprietary lessees of the units involved.

Cross References. Section 4211 is referred to in sections 4216, 4417 of this title.

§ 4212. Subdivision of units.

(a) **General rule.**--Subject to the provisions of the declaration and other provisions of law, a unit may be subdivided into two or more units by an amendment to the declaration upon application to the association by the proprietary lessee of the unit to be subdivided. If the proprietary lessee of such unit has specified a reallocation between the newly created units' cooperative interests of their common interests, votes in the association and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable or are inconsistent with any restrictions on such reallocation that may be set forth in the declaration, the association shall prepare and record an amendment to the declaration that identifies the newly created units, states the reallocation and shows or describes, by plans or otherwise, the boundaries of the newly created units and their sizes and identifying numbers.

(b) **Execution and recording of amendment.**--The amendment to the declaration shall be executed by the proprietary lessee whose unit is being subdivided and by the association and upon recordation shall be indexed in the name of the proprietary lessee as well as the association in the grantor and grantee indexes. The amendment shall be prepared and recorded at the expense of the proprietary lessee of the unit being subdivided.

Cross References. Section 4212 is referred to in sections 4216, 4417 of this title.

§ 4213. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a proprietary

lessee of liability in case of willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to any representation in the public offering statement.

§ 4214. Declarant's office, models and signs.

A declarant may maintain sales or rental offices, management offices and models in units or on common elements otherwise restricted to residential use only if the declaration so provides and specifies the right of the declarant with regard to the number, size, location and relocation thereof. The use of any such sales or rental offices, management offices and models by the declarant shall be confined to the sale, rental or management of units in the cooperative where such units are located. Any sales or rental office, management office or model not designated a unit by the declaration is a common element, and, if a declarant ceases to have an ownership interest in the association, he ceases to have any rights with regard thereto unless such office or model is removed promptly from the cooperative in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs in his units and on the common elements advertising the cooperative owned by the declarant for sale or lease.

Cross References. Section 4214 is referred to in sections 4103, 4205, 4304, 4417 of this title.

§ 4215. Easement rights.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this subpart or reserved in the declaration.

Cross References. Section 4215 is referred to in sections 4103, 4417 of this title.

§ 4216. Amendment of declaration.

(a) Number of votes required.--Except in cases of amendments that may be executed by a declarant under section 4209 (relating to exercise of development rights), the association under section 4107 (relating to eminent domain), 4206(c) (relating to leasehold cooperatives), 4208(c) (relating to limited common elements), 4211(a) (relating to relocation of boundaries between adjoining units) or 4212 (relating to subdivision of units), the executive board of the association under subsection (f) or certain proprietary lessees under section 4208(b), 4211(a), 4212(b) or 4217(b) (relating to termination of cooperative ownership), and except as limited by subsection (d) and section 4218 (relating to rights of secured lenders and secured creditors), the declaration may be amended only by vote or agreement of proprietary lessees of cooperative interests to which at least 67% of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) Limitation of action to challenge amendment.--No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than six months after the amendment is recorded.

(c) Recording amendment.--The following shall apply:

(1) Every amendment to the declaration must be recorded in every county in which any portion of the cooperative is located in the same records as are maintained for the recording of deeds of real property and is effective only

upon recordation. In cases where the amendment is executed by the association, it shall be indexed in the name of the cooperative and the association in both the grantor and the grantee index. In cases where the amendment is executed by the declarant or one or more proprietary lessees, it shall be indexed in the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of the declarant or proprietary lessee or lessees, as well as in the name of the association.

(2) Except for counties which do not maintain a uniform parcel identifier number system of indexing, all counties shall assign a master parcel number to each cooperative, and every amendment to the declaration shall be indexed against the master parcel. If required by the county, an amendment may be indexed against a parcel assigned to each unit within the cooperative, but no fees shall be charged to each unit unless the indexing against each parcel is requested by the declarant or association.

(3) The provisions of this subsection shall control over any conflicting provisions in any other statute, regulation or ordinance.

(d) Restrictions on amendments.--Except to the extent expressly permitted or required by the provisions of this subpart, no amendment may create or increase special declarant rights in the absence of the unanimous consent of the proprietary lessees nor may any amendment otherwise duly adopted:

(1) Change the boundaries of any unit without the approval of the proprietary lessee of such unit.

(2) Change the allocated interests of a cooperative interest without the approval of the proprietary lessee who owns such cooperative interest.

(3) Change the uses to which any unit is restricted without the approval of the proprietary lessee of such unit.

(e) Officer authorized to execute amendment.--Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) Corrective amendments.--Except as otherwise provided in the declaration, if any amendment to the declaration is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the declaration that is defective, missing or inconsistent with any other provision thereof or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in cooperative projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the cooperative or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, proprietary lessees, residents or employees, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the proprietary lessees or the holders of any liens on all or any part of the cooperative, upon receipt

by the executive board of an opinion from legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.
(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days; Nov. 4, 2016, P.L.1214, No.162, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 amended subsec. (f).

2016 Amendment. Act 162 amended subsec. (c).

2004 Amendment. Act 190 amended subsecs. (a) and (f).

Cross References. Section 4216 is referred to in sections 4102, 4209, 4303 of this title.

§ 4217. Termination of cooperative ownership.

(a) Number of votes required.--Except:

(1) in the case of the taking of all of the units by eminent domain (section 4107);

(2) in the case of foreclosure of a security interest against the entire cooperative which has priority over the declaration or which is subordinate to a declaration that expressly provides that the holder of the security interest has the right to terminate the cooperative when the foreclosure of the security interest has been consummated; or

(3) in the case of the expiration or termination of a lease which has priority over the declaration (unless a contrary intent is expressly stated in the lease); cooperative ownership may be terminated only at a meeting of the association and by the vote, in person or by proxy, of proprietary lessees of cooperative interests to which at least 80% of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the cooperative are restricted exclusively to nonresidential uses.

(b) Execution and recording of termination agreement.--An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of proprietary lessees. The termination agreement must specify the date it was first executed or ratified by a proprietary lessee. If, pursuant to a termination agreement, the real estate in the cooperative is to be sold following termination, the termination agreement must set forth the terms of the sale. The termination agreement will become null and void unless it is recorded on or before the earlier of:

(1) The expiration of the year from the date and all ratifications thereof it was first executed and ratified by a proprietary lessee.

(2) Such date as shall be specified in the termination agreement.

A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the cooperative is situated in the same records as are maintained for the recording of deeds of real property and indexed in the name of the cooperative and the association in both the grantor index and the grantee index. A termination agreement is effective only upon recordation.

(c) Status if real estate sold.--The association, on behalf of the proprietary lessees, may contract for the sale of real estate in the cooperative, but the contract is not binding until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds

thereof distributed, the association continues in existence with all powers it had before termination. Except to the extent that any provisions in the declaration limit the amount that may be received by a proprietary lessee upon termination (section 4205(a)(10)), proceeds of the sale must be distributed to holders of liens against the association, against the cooperative interests and to proprietary lessees, all as their interests may appear, in accordance with subsections (d) and (e) with proprietary lessees being entitled to receive the entire balance of the association's assets, after payment of all such lienholders, pursuant to subsection (e), except that, in the case of a limited equity cooperative with a declaration of the type described in section 4321(e) (relating to limited equity cooperatives), the provisions of that section shall govern. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each proprietary lessee and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each proprietary lessee and his successors in interest remain liable for all assessments and other obligations imposed on proprietary lessees by this subpart or the declaration.

(d) Priority of liens.--Following termination of the cooperative, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for proprietary lessees and holders of liens against the association and the cooperative interests as their interests may appear. The declaration may provide that all creditors of the association have priority over any interests of proprietary lessees and creditors of proprietary lessees. In that event, following termination, creditors of the association holding liens on the cooperative which were perfected before termination may enforce their liens in the same manner as any lienholder, and any other creditor of the association is to be treated as if he had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(1) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each cooperative interest as of the date the lien was perfected.

(2) Any other creditor of the association is to be treated upon termination as if he had perfected a lien against the cooperative interests immediately before termination.

(3) The amount of the lien of an association's creditor described in paragraphs (1) and (2) against each of the cooperative interests must be proportionate to the ratio which that cooperative interest's common expense liability bears to the common expense liability of all of the cooperative interests.

(4) The one lien, unless the declaration designates a greater number, against each proprietary lessee which was perfected prior to any other liens against the proprietary lessee and before termination continues as a lien against the proprietary lessee's cooperative interest as of the date the lien was perfected.

(5) Any other creditor of a proprietary lessee is to be treated upon termination as if he had perfected a lien against that proprietary lessee immediately before termination.

(6) The assets of the association shall be distributed to all proprietary lessees and all lienholders against their cooperative interests as their interests may appear in the order described in paragraphs (1) through (5), and creditors of the association are not entitled to payment from any proprietary lessee in excess of the amount of the creditor's lien against that proprietary lessee's cooperative interest. Regardless of the priority given to creditors of the association, no proprietary lessee shall have any personal liability to a creditor of the association beyond such proprietary lessee's cooperative interest.

(e) Valuation of proprietary lessee's interest.--The declaration may provide that the respective interests of proprietary lessees referred to in subsections (c) and (d) are the fair market values of the cooperative interests as of a date no earlier than six months prior to the termination as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the proprietary lessees at least 30 days prior to a meeting of the association at which meeting the appraisal will be deemed approved unless it is rejected by vote, in person or by proxy, of proprietary lessees holding more than 50% of the votes in the association. If the declaration provides for such an appraisal procedure, the proportion of any proprietary lessee's interest to that of all proprietary lessees is determined by dividing the fair market value of that proprietary lessee's cooperative interest by the total fair market values of all the cooperative interests. If the declaration does not provide for such an appraisal procedure or if the appraisal is rejected by the requisite number of votes in the association, the interests of all proprietary lessees are their respective ownership interests in the association immediately before the termination. If the declaration provides for an appraisal procedure, there shall be no vote taken among the proprietary lessees as to whether or not the cooperative form of ownership should be terminated until after the vote is first taken as to whether or not the appraisal should be approved.

(f) Termination by successor in title.--In the case of a foreclosure of a lien against the entire cooperative or in the case of the expiration or termination of a lease which has priority over the declaration, the successor in title shall have the right to terminate the cooperative.

(g) Ineffectiveness of termination provision.--In the case of a declaration that contains no provision expressly providing for a means of terminating the cooperative other than a provision providing for a self-executing termination upon a specific date or upon the expiration of a specific time period, such termination provision shall be deemed ineffective if no earlier than five years before the date the cooperative would otherwise be terminated the owners of at least 80% of the units in the cooperative vote that the self-executing termination provision shall be annulled, in which event the self-executing termination provision shall have no force or effect.
(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days)

2004 Amendment. Act 190 added subsec. (g).

Cross References. Section 4217 is referred to in sections 4102, 4216, 4301, 4303, 4312, 4313, 4318, 4321 of this title.
§ 4218. Rights of secured lenders and secured creditors.

(a) Secured lender approval.--The declaration may provide that all or a specified number or percentage of secured

creditors of the association or lenders holding security interests encumbering the cooperative interests approve specified actions of the proprietary lessees of the association as a condition to the effectiveness of those actions, and the declaration may provide for procedures that will enable such lenders to have their approval rights recognized by the executive board, but no requirement for approval may operate to:

(1) Deny or delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board.

(2) Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding.

(3) Receive and distribute any insurance proceeds except pursuant to section 4313 (relating to insurance).

(b) Secured lender approval procedures.--If the declaration requires mortgagees or beneficiaries of deeds of trust encumbering the units to approve specified actions of the proprietary lessees or the association as a condition to the effectiveness of those actions, then the executive board will provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified. If the notice to the secured lender, issued in accordance with the procedures set forth in this subsection, states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 45 days and the secured lender does not respond in writing within 45 days, then the secured lender will be deemed for all purposes to have approved the action specified in the notice. Written notice to the secured lender shall be given by certified, registered or first-class mail, evidenced by a United States Postal Service certificate of mailing, postage prepaid, at the address provided by the secured lender or, in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust of record and at the address to which the unit owner mails any periodic payment paid to the secured lender. The notice to the secured lender shall include a statement of the specified action, a copy of the full text of any proposed amendment and a form prepared by the association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.
(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days)

Cross References. Section 4218 is referred to in section 4216 of this title.

§ 4219. Master associations.

(a) General rule.--If the declaration provides that any of the powers described in section 4302 (relating to powers of association) are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more cooperatives, condominiums, homeowners associations or any combination of the foregoing or for the benefit of the proprietary lessees of one or more cooperatives, unit owners of one or more condominiums, members of one or more homeowners associations or some combination of the foregoing, all provisions of this subpart applicable to associations apply to any such corporation or unincorporated association insofar as such association is acting on behalf of one or more cooperatives, except as modified by this section.

(b) Exercise of powers of association.--Unless a master association is acting in the capacity of an association described in section 4301 (relating to organization of association), it may exercise the powers set forth in section 4302 only to the extent expressly permitted in the declarations of the cooperatives which are part of the master association or expressly described in the delegations of power from those cooperatives to the master association.

(c) Liability for exercise of delegated powers.--If the declaration of any cooperative provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts of omissions of the master association with respect to those powers following delegation. The officers and members of the governing board of the master association are subject to liability to the cooperative association whose powers are delegated thereto and the proprietary lessees of such cooperative on the same basis as officers and executive board members of such cooperative immediately before such delegation of power.

(d) Rights and liabilities of proprietary lessees.--The rights and responsibilities of proprietary lessees with respect to the association set forth in sections 4303 (relating to executive board members and officers), 4308 (relating to meetings), 4309 (relating to quorums), 4310 (relating to voting; proxies), 4312 (relating to conveyance or encumbrance of cooperative) and 4320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise proprietary lessees within the meaning of this subpart.

(e) Election of executive board.--Notwithstanding the provisions of section 4303(f) with respect to the election of the executive board of an association by all proprietary lessees after the period of declarant control ends and even if a master association is also an association described in section 4301, the certificate of incorporation or other instrument creating the master association and the declaration of each cooperative, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All proprietary lessees of all cooperatives subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all cooperatives subject to the master association may elect all members of that executive board.

(3) All proprietary lessees of each cooperative subject to the master association may elect specified members of the executive board.

(4) All members of the executive boards of each cooperative subject to the master association may elect specified members of that executive board.

(e.1) Independent reviewer.--The certificate of incorporation or other instrument creating the master association and the declaration of each cooperative, the powers of which are assigned by the declaration or delegated to the master association, shall provide that a vote by a proprietary lessee in an election of the executive board of an association must be submitted by the proprietary lessee to an independent reviewer who shall tally the results of the election and certify the results to the executive board and proprietary lessees. In

order to be eligible to vote in the election, a proprietary lessee shall be in good standing with the master association. The executive board shall present the official election results based on the certified election report from the independent reviewer at a meeting of the proprietary lessees and shall enter the results in the meeting records. All votes by proprietary lessees under this subsection shall be submitted to the independent reviewer in accordance with the approved methods of voting as provided under this subpart. This subsection shall only apply to a cooperative with at least 500 units. If a cooperative has less than 500 units, the master association may opt in to the requirements under this subsection by a vote of at least 51% of the votes collected from the unit owners in person, electronically or by absentee ballot which are in favor of the requirements under this subsection.

(f) When section applicable to cooperative.--The provisions of this section shall apply to a cooperative if and when:

(1) there occurs either a date specified in the declaration or any amendment thereto from and after which this section shall apply to the cooperative;

(2) there occurs an event or action that the declaration or any amendment thereto states shall cause this section to become applicable, and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) such event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the cooperative; and

(ii) that a copy of such instrument has been sent to all proprietary lessees; or

(3) the declarant executes and records an instrument stating that this section shall thereafter apply to the cooperative and that a copy of the instrument has been sent to the executive board and all proprietary lessees. Paragraph (3) shall be applicable only if the declarant expressly reserved in the declaration, pursuant to section 4205(a)(8) (relating to contents of declaration), the special declarant right to make this section applicable to the cooperative and only if the instrument exercising such right is recorded during the time period allowed for the exercise of such right.

(g) When executive board not required.--If all of the powers of a cooperative association are delegated to a master association and accepted by the master association pursuant to this section, then the governing body of the master association may act in all respects as the executive board of the cooperative and no separate executive board need be elected or exist.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added subsec. (e.1).

Cross References. Section 4219 is referred to in sections 4102, 4103, 4302 of this title.

§ 4220. Merger or consolidation of cooperatives.

(a) General rule.--Any two or more cooperatives, by agreement of the proprietary lessees as provided in subsection (b), may be merged or consolidated into a single cooperative. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant cooperative is, for all purposes, the legal successor of all of the preexisting cooperatives, and the operations and activities of all associations of the preexisting cooperatives shall be merged

or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant cooperative shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting cooperatives have been established under this subpart.

(b) Execution and recording of agreement.--The merger or consolidation of two or more cooperatives pursuant to subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting cooperatives following approval by proprietary lessees of cooperative interests to which are allocated the percentage of votes in each cooperative required to terminate that cooperative. Any such agreement must be recorded in every county in which a portion of the cooperative is located and is not effective until so recorded.

(c) Reallocation of allocated interests.--Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the cooperative interests of the resultant cooperative either:

(1) by stating the reallocations or the formulas upon which they are based; or

(2) by stating the percentage of overall allocated interests of the new cooperative which are allocated to all of the cooperative interests comprising each of the preexisting cooperatives and providing that the portion of the percentages allocated to each cooperative interest formerly comprising a part of the preexisting cooperative must be equal to the percentages of allocated interests allocated to that cooperative interest by the declaration of the preexisting cooperative.

(d) Execution of agreement by declarant who retained rights.--Notwithstanding the provisions of subsections (a) and (b), if a declarant expressly retained the special declarant right to merge or consolidate a cooperative pursuant to section 4205(a)(8) (relating to contents of declaration) and if the declarant exercised such right within the time period allowed for such exercise by giving written notice to that effect to all proprietary lessees accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be executed by the declarant rather than by the president of the association of that cooperative and without the necessity for approval or consent by proprietary lessees or their mortgagees provided the agreement is recorded within the time period allowed for the exercise of this special declarant right.

Cross References. Section 4220 is referred to in sections 4102, 4103 of this title.

§ 4221. Method for transferring a cooperative interest.

(a) General rule.--In order to effectuate the transfer of a cooperative interest, the transferor, the transferee and the association shall execute an instrument which may be recorded in the same manner as a lease and which must include the following:

(1) The names of the transferor and transferee.

(2) A description of the unit that is the subject of the proprietary lease included in such cooperative interest, which description shall contain the items required by section 4204 (relating to description of units).

(3) Language evidencing an intent to transfer the cooperative interest, which may include:

(i) An assignment by the transferor, by endorsement or otherwise, of the instrument, if any, used to evidence the ownership of the cooperative interest, including, but not limited to, a stock or membership certificate.

(ii) The transfer of the cooperative interest on the books of the association.

(iii) An assignment of the transferor's interest in the proprietary lease that is part of the cooperative interest being disposed of.

(4) Joinder by the association for the purpose of:

(i) Acknowledging such transfer on the books of the association.

(ii) Stating the amount, if any, of any unpaid common expense or special assessment currently due and payable from the transferor.

(iii) Stating whether or not such transfer violates any rights of the association restricting the alienation of the cooperative interest or restricting the amount for which the cooperative interest may be sold or restricting the amount that may be received by the transferor upon such sale.

(b) Rights and liabilities of transferee.--The transferee shall not be liable for any unpaid assessment or fee greater than the amount set forth in the instrument nor shall the transferee be bound by any restriction in favor of the association which is violated as a result of the transfer but which is not stated as having been violated in the instrument.

CHAPTER 43

MANAGEMENT OF COOPERATIVES

Sec.

- 4301. Organization of association.
- 4302. Powers of association.
- 4303. Executive board members and officers.
- 4304. Transfer of special declarant rights.
- 4305. Termination of contracts and leases of declarant.
- 4306. Bylaws.
- 4307. Upkeep of cooperative.
- 4308. Meetings.
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- 4310. Voting; proxies.
- 4311. Tort and contract liability.
- 4312. Conveyance or encumbrance of cooperative.
- 4313. Insurance.
- 4314. Assessments for common expenses.
- 4315. Lien for assessments.
- 4316. Other liens affecting cooperative.
- 4317. Association records.
- 4318. Association as trustee.
- 4319. Termination of cooperative interest.
- 4320. Declarant delivery of items to association.
- 4321. Limited equity cooperatives.
- 4322. Alternative dispute resolution in cooperatives.
- 4323. Complaints filed with Bureau of Consumer Protection.

Enactment. Chapter 43 was added December 18, 1992, P.L.1426, No.176, effective in 60 days.

§ 4301. Organization of association.

An association must be organized prior to the date the first cooperative interest in the cooperative is conveyed to anyone

other than the declarant or an affiliate of the declarant. An association may be organized prior to the date on which the real estate subject to the provisions of this subpart is acquired. Immediately upon creation of the cooperative pursuant to section 4201 (relating to creation of cooperative ownership) and at all times thereafter, the membership of the association shall consist exclusively of all the proprietary lessees or, following termination of the cooperative, of all former proprietary lessees entitled to distributions of proceeds under section 4217 (relating to termination of cooperative ownership) or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation, trust, trustee or partnership.

Cross References. Section 4301 is referred to in sections 4103, 4219 of this title.

§ 4302. Powers of association.

(a) General rule.--Except as provided in subsection (b) and subject to the provisions of the declaration, the association may:

- (1) Adopt and amend bylaws and rules and regulations.
- (2) Adopt and amend budgets for revenues, expenditures and reserves, which budgets shall include, but shall not be limited to, the financial information listed in section 4403(a)(5) (relating to public offering statement; general provisions), and collect assessments for common expenses from proprietary lessees.
- (3) Hire and discharge managing agents and other employees, agents and independent contractors.
- (4) Institute, defend or intervene in litigation or administrative proceedings, or engage in arbitrations or mediations, in its own name on behalf of itself or two or more proprietary lessees on matters affecting the cooperative.
- (5) Make contracts and incur liabilities.
- (6) Regulate the use, maintenance, repair, replacement and modification of common elements and make reasonable accommodation or permit reasonable modifications to be made to units or the common elements to accommodate handicapped as defined by prevailing Federal, State or local statute, regulation, code or ordinance, proprietary lessees, residents, tenants or employees.
- (7) Cause additional improvements to be made as a part of the common elements.
- (8) (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property other than common facilities; and
(ii) convey or subject all or part of the cooperative to a security interest only pursuant to section 4312 (relating to conveyance or encumbrance of cooperative).
- (9) Grant easements, leases, licenses and concessions through or over the common elements. Any such easement, lease, license or concession that is not for the benefit of all or substantially all of the proprietary lessees shall not be granted without the same proprietary lessee approval that is required for an amendment to the declaration or that materially impairs any right or benefit that one or more proprietary lessees may have with respect to the common elements shall not be granted without the prior written approval of those proprietary lessees.

(10) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 4202(2) and (4) (relating to unit boundaries) and for services provided to proprietary lessees.

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard:

(i) Levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.

(ii) For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights, including, without limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 4409 (relating to resales of cooperative interests) or statements of unpaid assessments. In addition, an association may impose a capital improvement fee on the resale or transfer the leasehold interest in units in accordance with the following:

(i) The capital improvement fee for any unit may not exceed the annual assessments for general common expense charged to such unit during the most recently completed fiscal year of the association, provided that:

(A) in the case of resale or transfer of the leasehold interest in a unit consisting of unimproved real estate, the capital improvement fee may not exceed one-half of the annual assessments for general common expenses charged to such unit during the most recently completed fiscal year of the association;

(B) in the case of resale or transfer of the leasehold interest in a unit which was created or added to the cooperative in accordance with section 4209 (relating to exercise of development rights) at some time during the most recently completed fiscal year of the association but was not in existence for the entire fiscal year, the capital improvement fee may not exceed one-half of the annual assessments for general common expenses charged to a unit comparable to such unit during the most recently completed fiscal year of the association; and

(C) capital improvement fees are not refundable upon any sale, conveyance or other transfer of the proprietary lease to a unit.

(ii) Capital improvement fees allocated by an association must be maintained in a separate capital account, may be expended only for new capital improvements or replacement of existing common elements and improvements on the common elements and may not be expended for operation, maintenance or other purposes.

(iii) No capital improvement fee may be imposed on any gratuitous transfer of a proprietary interest in a unit between any of the following family members: spouses, parent and child, siblings, grandparent and grandchild; nor on any transfer of a unit by foreclosure sale or deed in lieu of foreclosure to a secured lending institution as defined by the act of December 3, 1959

(P.L.1688, No.621), known as the Housing Finance Agency Law.

(iv) No fees may be imposed upon any person who:

(A) acquires a proprietary interest in a unit consisting of unimproved real estate and signs and delivers to the association at the time of such person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months of its acquisition; and

(B) completes such reconveyance within 18 months.

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(14) Assign its right to future income, including the right to receive the payments made on account of common expense assessments. Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.

(15) Enjoin, abate or remedy by appropriate legal proceedings either at law or in equity any violation of the declaration, bylaws or this subpart by any proprietary lessee or other person.

(16) Terminate proprietary leases and all rights of proprietary lessees with respect to their cooperative interests and redeem cooperative interests of proprietary lessees in connection with the exercise of the association's remedies for nonpayment of assessments pursuant to section 4315 (relating to lien for assessments) or in connection with the association's remedies for other violations of the declaration, bylaws, proprietary lease or this subpart pursuant to section 4319 (relating to termination of cooperative interest), although the declaration may expressly require such termination to be subject to the approval of a specified vote of the proprietary lessees if the cause for such termination is of a type specified in the declaration or is for any cause if the declaration so specifies.

(17) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions of section 4219 (relating to master associations) and accept any assignment or delegation of powers from one or more cooperatives or other incorporated or unincorporated associations.

(18) Exercise any other powers conferred by the declaration or bylaws.

(19) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association.

(20) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) Restrictions on limitations in declaration.--The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.
(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (a)(11).

2004 Amendment. Act 190 amended subsec. (a)(4), (6), (8), (12) and (14).

Cross References. Section 4302 is referred to in sections 4102, 4203, 4219, 4315 of this title.

§ 4303. Executive board members and officers.

(a) Fiduciary status and exercise of duties.--Except as provided in the declaration, the bylaws in subsection (b) or in other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith, in a manner they reasonably believe to be in the best interests of the association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the investment of trust funds and shall be governed in the management of the association's reserve funds by 20 Pa.C.S. § 7203 (relating to prudent investor rule). In performing his duties, an officer or executive board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more other officers or employees of the association whom the officer or executive board member reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the officer or executive board member reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the executive board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the officer or executive board member reasonably believes to merit confidence.

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with such care in the manner set forth in this section.

(b) Limitation on authority.--The executive board may not act on behalf of the association to amend the declaration (section 4216), to terminate the cooperative (section 4217) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members (subsection (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. The law governing corporations, including nonprofit corporations, and such other laws governing the legal entities of the same type as the association supplement the provisions of this subsection to the extent not inconsistent with the provisions of this subpart.

(c) Adoption and ratification of budget.--Within 30 days after adoption of any proposed budget for the cooperative, the executive board shall provide the budget to all the proprietary lessees and shall set a date for a meeting of the proprietary

lessees to consider ratification of the budget not less than 14 days nor more than 30 days after mailing of the budget. Unless at that meeting a majority of all the proprietary lessees or any larger vote specified in the declaration reject the budget, the budget is ratified whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the proprietary lessees shall be continued until such time as the proprietary lessees ratify a subsequent budget proposed by the executive board.

(d) Status during period of declarant control.--Subject to subsection (e), the declaration may provide for a period of declarant control of the association during which period a declarant or persons designated by him may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, any period of declarant control terminates no later than the earlier of:

(1) 180 days after conveyance to proprietary lessees other than a declarant of 75% of the cooperative interests which may be created; or

(2) two years after the date of the first conveyance of cooperative interests to a person other than a declarant. A declarant may voluntarily surrender the right to appoint and remove some or all of the officers and members of the executive board before termination of that period, but in that event he may require for the duration of the period of declarant control that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Election of members during transfer of declarant control.--Not later than 60 days after conveyance to proprietary lessees, other than a declarant, of 25% of the cooperative interests which may be created, at least one member and not less than 25% of the members of the executive board must be elected by proprietary lessees other than the declarant. Not later than 60 days after conveyance to proprietary lessees, other than a declarant, of 50% of the cooperative interests which may be created, not less than 33 1/3% of the members of the executive board must be elected by proprietary lessees other than the declarant.

(f) Election of executive board following declarant control.--

(1) Not later than the termination of any period of declarant control, the proprietary lessees shall elect an executive board of at least three members, at least a majority of whom must be proprietary lessees. Unless the declarant has retained such right during the declarant control period, the executive board shall elect the officers. The executive board members and officers shall take office upon election.

(2) In the event that the election of the executive board by the proprietary lessees fails to take place not later than the termination of a period of declarant control as provided in this section, then a special meeting of the proprietary lessees may be called for such purpose by any member of the executive board elected by the proprietary lessees or, if there is no such member of the executive board, the proprietary lessees entitled to cast at least 10% of the votes in the association.

(g) Removal of member of executive board.--Notwithstanding any provision of the declaration or bylaws to the contrary, the proprietary lessees, by a two-thirds vote of all persons present and entitled to vote at any meeting of the proprietary lessees

at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant, provided notice of the intention to remove a member of the executive board is given with the notice of the meeting at which such removal is considered. (Nov. 30, 2004, P.L.1499, No.190, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (f).

2004 Amendment. Act 190 amended subsec. (a).

Cross References. Section 4303 is referred to in sections 3303, 4102, 4103, 4205, 4219, 4304, 4305, 4306, 4314, 4320, 4414 of this title.

§ 4304. Transfer of special declarant rights.

(a) Execution and recording of instrument of transfer.--No special declarant rights (section 4103) created or reserved under this subpart may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the cooperative is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the cooperative, the transferor and the transferee in both the grantor and grantee index. The instrument is not effective unless executed by the transferee.

(b) Liability of declarant following transfer.--Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this subpart. Lack of privity does not deprive any proprietary lessee of standing to bring an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (section 4103), the transferor is jointly and severally liable with the successor for any liabilities and or obligations or liabilities of the successor relating to the cooperative.

(3) If a transferor retains any special declarant rights but transfers one or more other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this subpart or by the declaration relating to the retained special declarant rights arising after the transfer.

(4) A transferor who retains no special declarant rights has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor and to whom the special declarant right has not theretofore been assigned.

(c) Rights of purchaser in foreclosure, etc., proceedings.--Unless otherwise provided in the documents creating a security interest, in case of foreclosure of a security interest, tax sale, judicial sale, sale by a trustee under a security agreement or sale under 11 U.S.C. (relating to bankruptcy) or receivership proceedings of any cooperative interests owned by a declarant or real estate in a cooperative subject to development rights, a person acquiring all the cooperative interests or real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that property held by that declarant or only to any rights reserved in the declaration pursuant to section

4214 (relating to declarant's office, models and signs) and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Rights of declarant following foreclosure, etc., proceedings.--Upon foreclosure, tax sale, judicial sale, sale by a trustee under a security agreement or sale under 11 U.S.C. or receivership or similar proceedings of all cooperative interests or real estate in a cooperative owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control (section 4303(d)) terminates unless the judgment or instrument conveying title provides for transfer to a successor declarant of all special declarant rights held by the transferor declarant.

(e) Liabilities and obligations of successors.--The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this subpart or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4), who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this subpart or the declaration:

(i) on a declarant which relate to his exercise or nonexercise of special declarant rights; or

(ii) on his transferor, other than:

(A) misrepresentations by any previous declarant, except to the extent knowingly continued or permitted to continue without correcting such misrepresentations;

(B) warranty obligations on improvements made by any previous declarant made before the cooperative was created;

(C) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs (section 4214), if he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant except the obligation to provide a public offering statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor declarant and who succeeded to those rights pursuant to a deed or other instrument conveying title to cooperative interests or real estate subject to special declarant rights under subsection (c) may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any cooperative interest or real estate subject to development rights owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than

any right held by his transferor to control the executive board in accordance with the provisions of section 4303(d) (relating to executive board members and officers) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant right under this subsection, he is not subject to any liability or obligations as a declarant except liability for his acts and omissions under section 4303(d) and except the obligations set forth in paragraph (3).

(f) Limitation on liability of successor.--Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant other than claims and obligations arising under this subpart or the declaration.

Cross References. Section 4304 is referred to in section 4402 of this title.

§ 4305. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the proprietary lessees pursuant to section 4303(f) (relating to executive board members and officers) takes office:

- (1) any management contract, employment contract or lease of recreational or parking areas or facilities;
- (2) any other contract or lease between the association and declarant or an affiliate of a declarant; or
- (3) any contract or lease that is not bona fide or was unconscionable to the proprietary lessees at the time entered into under the circumstances then prevailing;

may be terminated without penalty by the association at any time within one year after the executive board elected by the proprietary lessees pursuant to section 4303(f) takes office upon not less than 90 days' notice to the other party. This section does not apply to any agreement of sale for the purchase of land and other real property which has been subjected to the cooperative form of ownership nor does this section apply to any proprietary lease or any lease the termination of which would terminate the cooperative or reduce its size unless the real estate subject to that lease was included in the cooperative for the purpose of avoiding the right of the association to terminate a lease under this section.

§ 4306. Bylaws.

(a) Mandatory provisions.--The bylaws of the association must provide for:

- (1) The number of members of the executive board and the titles of the officers of the association.
- (2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify.
- (3) The qualifications, powers and duties, terms of office and manner of electing executive board members and officers and removing executive board members and officers under section 4303(g) (relating to executive board members and officers) and filling vacancies.
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.
- (5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.
- (6) The method of amending the bylaws. The following apply:

(i) The bylaws may be amended only by vote or agreement of proprietary lessees of cooperative interests to which at least:

(A) Fifty-one percent of the votes in the association are allocated.

(B) A larger majority as specified in the bylaws.

(C) A smaller majority as specified in the bylaws if all of the units are restricted exclusively to nonresidential use.

(ii) The vote may be taken only at a scheduled meeting and following notice to the unit owners as provided under section 4308 (relating to meetings) that was advertised 14 days in advance to the proprietary lessees. Absentee voting shall be permitted to proprietary lessees provided that the ballots must be submitted to an independent reviewer by the commencement of the scheduled meeting.

(b) Other provisions.--Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(c) Corrective amendments.--Except as otherwise provided in the bylaws or code of regulations, if any amendment to the bylaws or code of regulations is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the bylaws or code of regulations that is defective, missing or inconsistent with any other provision thereof, with the declaration or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in cooperative projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the cooperative or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, proprietary lessees, residents or employees, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the proprietary lessees or the holders of any liens on all or any part of the cooperative, upon receipt by the executive board of an opinion from legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Mar. 27, 2020, P.L.35, No.11, eff. 60 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 amended subsec. (a)(3) and (6).

2020 Amendment. Act 11 added subsec. (c).

§ 4307. Upkeep of cooperative.

(a) General rule.--Except to the extent provided by the declaration, subsection (b), section 4313(g) (relating to insurance) or 4321(g) (relating to limited equity cooperatives), the association is responsible for maintenance, repair and replacement of the common elements, and each proprietary lessee is responsible for maintenance, repair and replacement of his unit. Each proprietary lessee shall afford to the association and the other proprietary lessees and to their agents or

employees access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any units through which access is taken, the proprietary lessee responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) Rights and liabilities of declarant.--In addition to the liability that a declarant as a proprietary lessee has under this subpart, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other proprietary lessee and no other portion of the cooperative is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

Cross References. Section 4307 is referred to in sections 4102, 4321 of this title.

§ 4308. Meetings.

(a) Timing and notice.--A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by 20%, or any lower percentage specified in the bylaws, of the proprietary lessees. Not less than ten nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the proprietary lessee. The notice of a meeting may be delivered by electronic means if the unit owner has agreed in writing to accept the notice by electronic means or where the bylaws permit electronic notices. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget or assessment changes and, where the declaration or bylaws require approval of the proprietary lessees, any proposal to remove an executive board member or officer.

(b) Delivery of notice.--The bylaws must require that notice of virtual meetings of the association be given by:

(1) First class or express mail, postage prepaid, or courier service, charges prepaid, to the mailing address of each unit or to any other mailing address designated in writing by the proprietary lessee. Notice under this paragraph shall be deemed to have been given to a proprietary lessee when deposited in the United States mail or with a courier service for delivery to the proprietary lessee.

(2) Facsimile transmission, e-mail or other electronic communication to the proprietary lessee's facsimile number or address for e-mail or other electronic communications supplied by the proprietary lessee, provided that the unit owner has agreed in writing to accept the notice by electronic means or where the bylaws expressly permit means of delivering electronic notice. Notice under this paragraph shall be deemed to have been given to the proprietary lessee when sent.

(c) Use of remote technology.--Except as otherwise provided in the bylaws, an individual may participate in a meeting of the executive board or association by means of a conference telephone or other remote electronic technology, including the Internet, which allows participants in the meeting to hear each other. Participation in a meeting as authorized under this subsection shall be deemed in-person attendance at the meeting.

(d) Pre-election sessions.--The bylaws must require that, in the event that there are more candidates than open positions on the executive board, then, upon request of one or more of the candidates, the association shall hold a special session at least seven days prior to the election of an executive board member to allow the proprietary lessees to meet each candidate for an executive board position. Each candidate for an executive board position shall have equal time to address the proprietary lessees during a special session under this subsection.

(e) Recorded meeting.--Unless the bylaws provide otherwise, meetings of the association may be recorded by the executive board via audio or video technology, provided that an announcement is made by the presiding officer at the commencement of the meeting that the meeting will be recorded. A recorded meeting under this subsection shall be maintained and available to proprietary lessees for a period of no less than six months after the date of the meeting.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

Cross References. Section 4308 is referred to in sections 4103, 4219, 4306, 4310, 4323 of this title.

§ 4309. Quorums.

(a) Association.--

(1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than 10%.

(2) If the association fails to meet a quorum at two subsequent meetings under this subsection, the association may utilize the provisions under 15 Pa.C.S. § 5756(b) (relating to quorum) to meet quorum requirements, except as otherwise provided in the declaration or bylaws of the association.

(b) Executive board.--Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on that board are present at the beginning of the meeting.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 amended subsec. (a).

Cross References. Section 4309 is referred to in sections 4103, 4219, 4323 of this title.

§ 4310. Voting; proxies.

(a) Multiple owners of a unit.--If only one of the multiple proprietary lessees of a unit is present or represented by proxy at a meeting of the association, he is entitled to cast all the votes allocated to the cooperative interest of which that unit is a part. If more than one of the multiple proprietary lessees are present, the votes allocated to that cooperative interest may be cast only in accordance with the agreement of a majority in interest of the multiple proprietary lessees, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple proprietary lessees casts the votes allocated to that cooperative interest without protest being made promptly to the person presiding over the meeting by any of the other proprietary lessees of the cooperative interest.

(b) Proxies.--Votes allocated to a cooperative interest may be cast pursuant to a proxy duly executed by a proprietary

lessee. If there is more than one proprietary lessee of a unit, each proprietary lessee of the unit may vote or register protest to the casting of votes by the other proprietary lessees of the unit through a duly executed proxy. A proprietary lessee may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term. The bylaws may provide for requirements and a limit on the class of persons who may hold proxies pursuant to this subsection.

(c) Lessees other than proprietary lessees.--If the declaration requires that votes on specified matters affecting the cooperative be cast by lessees other than proprietary lessees of leased units:

(1) The provisions of subsections (a) and (b) apply to lessees as if they were proprietary lessees.

(2) Proprietary lessees who have leased their units to other persons may not cast votes on those specified matters.

(3) Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were proprietary lessees.

Proprietary lessees must also be given notice, in the manner provided in section 4308 (relating to meetings), of all meetings at which lessees may be entitled to vote. For the purposes of this subsection, the association shall maintain a register of lessees, showing the name and address of each lessee.

(d) Cooperative interests owned by association.--No votes allocated to a cooperative interest owned by the association may be cast.

(e) Approved methods of voting.--Methods of voting shall be in accordance with the following:

(1) Except to the extent expressly prohibited in an association's declaration or bylaws, the voting rights of a unit owner may be cast or given in the following ways:

(i) in person or by proxy at a meeting of the association;

(ii) by absentee or electronic ballot in accordance with this subpart; or

(iii) by another method of voting expressly provided in the association's declaration or bylaws.

(2) An absentee or electronic ballot may:

(i) Be counted as a unit owner present and voting for the purpose of establishing a quorum, and otherwise, only for agenda items appearing on the ballot.

(ii) Not be counted even if properly delivered, if the unit owner attends the meeting to vote in person. A vote cast at a meeting by a unit owner supersedes a vote submitted by absentee or electronic ballot previously submitted for that agenda item.

(3) For the purposes of this subsection, the term "electronic ballot" means a ballot cast or given by electronic transmission over the Internet, vote management system or the association's community network, whether by direct connection, intranet, telecopier, electronic mail or other technological means, if the identity of the unit owner submitting the ballot can be confirmed and a receipt of the electronic transmission and ballot can be made available to the unit owner.

(f) Acclamation.--Unless the bylaws of the association provide otherwise, in the event that an election for a position on the executive board is uncontested, the officer or chair

presiding at the election meeting may declare the nominee elected by acclamation after determining there are no further nominations.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added subsecs. (e) and (f).

Cross References. Section 4310 is referred to in sections 4103, 4219, 4323 of this title.

§ 4311. Tort and contract liability.

(a) General rule.--Neither the association nor any proprietary lessee except the declarant is liable for that declarant's torts in connection with any part of the cooperative which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any proprietary lessee. If the wrong occurred during any period of declarant control, the declarant who then controlled the association is liable to the association or to any proprietary lessee:

(1) For all tort losses suffered by the association or that proprietary lessee not covered by insurance.

(2) For all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission.

(b) Claims after declarant control.--If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the declarant under this section unless the association has given the declarant:

(1) Notice of the existence of such a claim promptly after the date on which one or more members of the executive board who are not designees of the declarant learns of the existence of such a claim.

(2) An opportunity to defend against such claim on behalf of the association but at the declarant's expense.

(c) Liability for litigation expenses.--Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney fees, incurred by the association.

(d) Tolling statute of limitations.--Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(e) Proprietary lessee as party.--A proprietary lessee is not precluded from bringing an action contemplated by this section because he is a proprietary lessee or a member or officer of the association.

(f) Liens.--Liens resulting from judgments against the association are governed by section 4316 (relating to other liens affecting cooperative).

Cross References. Section 4311 is referred to in section 4102 of this title.

§ 4312. Conveyance or encumbrance of cooperative.

(a) General rule.--Except as is otherwise provided in section 4321(h) (relating to limited equity cooperatives), part of the cooperative may be conveyed and all or part of the cooperative may be subjected to a security interest by the association if persons entitled to cast at least 66 2/3% of the votes in the association, including 66 2/3% of the votes allocated to cooperative interests not owned by a declarant or any larger percentage the declaration specifies, agree to that

action. Except as is otherwise provided in section 4321(h), if fewer than all the units or limited common elements are to be conveyed or subjected to a security interest, then all the proprietary lessees of those units or the units to which those limited common elements are allocated must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) Execution and recording of agreement to convey or encumber.--An agreement to convey a part of the cooperative or subject it to a security interest must be evidenced by the execution of an agreement or ratifications thereof, in the same manner as a deed, by the requisite number of proprietary lessees. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the cooperative is situated and is effective only upon recordation.

(c) Powers of association.--The association, on behalf of the proprietary lessees, may contract to convey a part of the cooperative or subject it to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary to execute deeds or other instruments.

(d) Unauthorized conveyance or encumbrance void.--Any purported conveyance, encumbrance, judicial sale, tax sale or other voluntary or involuntary transfer of the cooperative, unless made pursuant to this section or section 4217(c) (relating to termination of cooperative ownership), is void.

(e) Right of access and support preserved.--A conveyance or encumbrance of the cooperative pursuant to this section does not deprive any unit of its rights of access and support.

(f) Subject to declaration.--A part of the cooperative which is subject to the declaration prior to conveyance or encumbrance shall remain subject to the provisions of the declaration following the conveyance or encumbrance, unless the deed or agreement to convey the cooperative or subject it to a security interest specifically provides otherwise.

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (d) and added subsec. (f).

Cross References. Section 4312 is referred to in sections 4219, 4302, 4321 of this title.

§ 4313. Insurance.

(a) Insurance to be carried by association.--Commencing not later than the time of the first conveyance of a cooperative interest to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements and units.

(3) Any property or comprehensive general liability insurance carried by the association may contain a deductible provision.

(b) Other insurance carried by association.--If the insurance described in subsection (a) is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by the United States mail to all proprietary lessees. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance in such reasonable amounts and with such reasonable deductibles as the executive board may deem appropriate to protect the association or the proprietary lessees.

(c) Contents of insurance policies.--Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each proprietary lessee is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any proprietary lessee or member of his household.

(3) No act or omission by any proprietary lessee, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

(4) If, at the time of a loss under the policy, there is other insurance in the name of a proprietary lessee covering the same risk covered by the policy, the association's policy provides primary insurance.

(d) Proceeds from property insurance.--Any loss covered by the property policy under subsection (a)(1) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose or otherwise to the association and not to any mortgagee or beneficiary under a mortgage or deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, proprietary lessees and the lienholders as their interests may appear. Subject to the provisions of subsection (g), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, proprietary lessees and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the cooperative is terminated.

(e) Unit owner may obtain insurance.--A proprietary lessee may insure the lessee's unit for all losses to his unit, including losses not covered by the insurance maintained by the association, due to a deductible provision or otherwise. An insurance policy issued to the association shall not prevent a proprietary lessee from obtaining insurance for his own benefit, including insurance to cover any deductibles or losses not covered by the association's property or comprehensive general liability insurance.

(f) Evidence and cancellation of insurance.--An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any proprietary lessee or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each proprietary lessee and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(g) Disposition of insurance proceeds.--

(1) Any portion of the cooperative for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

- (i) the cooperative is terminated;
- (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or
- (iii) 80% of the proprietary lessees, including every proprietary lessee of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

Except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves which have not been identified by the executive board to fund costs of capital expenditures for the current fiscal year of the association is a common expense.

(2) If the entire cooperative is not repaired or replaced:

(i) the insurance proceeds attributed to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the cooperative; and

(ii) except to the extent that other persons will be distributees and except as is otherwise provided in section 4321(i) (relating to limited equity cooperatives):

(A) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the proprietary lessees of those units and the proprietary lessees of the units to which those limited common elements were located or to lienholders, as their interests may appear; and

(B) the remainder of the proceeds must be distributed to all the proprietary lessees or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the cooperative interests.

If the proprietary lessees vote not to rebuild any unit, the allocated interests of the cooperative interest of which that unit is a part are automatically reallocated upon the vote as if the unit had been condemned under section 4107(a) (relating to eminent domain), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(3) Notwithstanding the provisions of this subsection, section 4217 (relating to termination of cooperative

ownership) governs the distribution of insurance proceeds if the cooperative is terminated.

(h) Nonresidential cooperative.--The provisions of this section may be varied or waived in the case of a cooperative all of whose units are restricted to nonresidential use.

(i) Recovery of deductibles.--If an insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 4314(c) (relating to assessments for common expenses).
(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days)

2004 Amendment. Act 190 amended subsecs. (a), (b), (e) and (g) and added subsec. (i).

Cross References. Section 4313 is referred to in sections 4218, 4307, 4318, 4321 of this title.

§ 4314. Assessments for common expenses.

(a) General rule.--Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association, subject, however, to the provisions of section 4303(c) (relating to executive board members and officers) concerning ratification of the budget by the association.

(b) Allocation and interest.--Except for assessments under subsections (c), (d) and (e) and except as provided in subsection (g) with respect to cooperative interests owned by declarant, all common expenses must be assessed against all the cooperative interests in accordance with the allocations set forth in the declaration pursuant to section 4207(a) (relating to allocation of ownership interests, votes and common expense liabilities). Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association from time to time by prior written notice to all propriety lessees.

(c) Limited expenses.--Unless otherwise required by the declaration or as is otherwise provided in section 4321(j) (relating to limited equity cooperatives):

(1) any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed against the cooperative interests for the units to which that limited common element is assigned equally or in any other proportion that the declaration provides; and

(2) any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the cooperative interests for the units benefited.

(d) Insurance costs.--If required by the declaration, the costs of insurance must be assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage.

(e) Payment of judgments.--Assessments to pay a judgment against the association (section 4317(a)) may be made only against the cooperative interests in the cooperative at the time the judgment was entered, in proportion to their common expense liabilities.

(f) Common expense attributable to proprietary lessee.--If any common expense is caused by the action or failure to act of any proprietary lessee, the association may assess that expense exclusively against him or his cooperative interest or both of them.

(g) Reallocated common expense liabilities.--If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(h) Crediting of excess assessments.--Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which such limited common expenses pertain in excess of the amount required for actual limited common expenses and reserves for future limited common expenses shall be credited to the cooperative interest assessed for a share of such limited common expenses in proportion to the share of such limited common expenses so assessed. Unless the declaration provides otherwise, the credits shall be applied to the next monthly assessments of limited common expenses against the cooperative interest under the then current fiscal year's budget and, thereafter, until exhausted. Any amounts accumulated from assessments for general common expenses and income from the operation of the common elements, other than limited common elements with regard to which limited common expenses are assessed, in excess of the amount required for actual general common expenses and reserve for future general common expenses shall be credited to each cooperative interest in accordance with the allocations set forth in the declaration, unless the declaration provides otherwise, to the next monthly assessments of general common expenses against the cooperative interest under the then current fiscal year's budget and thereafter, until exhausted.

Cross References. Section 4314 is referred to in sections 4102, 4313, 4315, 4317, 4321, 4409 of this title.

§ 4315. Lien for assessments.

(a) General rule.--The association has a lien on a cooperative interest for any assessment levied against that cooperative interest, including payments to be made by declarant pursuant to section 4314(g) (relating to assessments for common expenses), or fines imposed against its owner from the time the assessment or fine becomes due. A judicial or other sale of the cooperative interest shall not affect the lien of a mortgage thereon if the mortgage is or shall be prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. § 8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for cooperative assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 4302(a) (11) and (12) (relating to powers of association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments is not paid when due, the entire outstanding balance becomes effective as a lien from the due date of the delinquent installment. Upon nonpayment of the assessment, the proprietary lessee may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed by judicial sale of the cooperative interest in like manner as a mortgage on real estate.

(b) Priority of lien.--

(1) A lien under this section is prior to all other liens and encumbrances on a cooperative interest except:

(i) Liens and encumbrances on the cooperative which the association creates, assumes or takes subject to.

(ii) (A) The first security interest encumbering only the cooperative interest and perfected before the date on which the assessment or the first installment payable on the assessment, if the assessment is payable in installments, sought to be enforced became delinquent.

(B) Judgments obtained for obligations secured by a security interest under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the cooperative or the cooperative interest.

(2) The association's lien for assessments shall be divested by a judicial sale of the cooperative interest:

(i) As to unpaid common expense assessments made under section 4314(b) that come due during the six months immediately preceding the date of a judicial sale of a cooperative interest in an action to enforce collection of a lien against a cooperative interest by a judicial sale, only to the extent that the six months unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 4314(b) other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments.

To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the cooperative interest.

(3) The lien is not subject to the provisions of 42 Pa.C.S. § 8123 (relating to general monetary exemption).

(c) Multiple liens on same property.--Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) Notice and perfection of lien.--Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien. No further recordation or filing of any claim of lien for assessment under this section is required.

(e) Limitation of actions.--A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the date on which the full amount of the assessment becomes due or, if paid in installments, the date on which the first installment payable on the assessment becomes due.

(f) Other remedies preserved.--This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a transfer or assignment in lieu of foreclosure.

(g) Costs and attorney fees.--A judgment or decree in any action brought under this section must include costs and reasonable attorney fees for the prevailing party.

(h) Statement of unpaid assessments.--The association, upon written request, shall furnish to a proprietary lessee a statement setting forth the amount of unpaid assessments against his cooperative interest. The statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every proprietary lessee.

(i) Application of payments.--

(1) Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied:

(i) First to any interest accrued by the association.

(ii) Second to any late fee.

(iii) Third to any costs and reasonable attorney fees incurred by the association in collection or enforcement.

(iv) Last to the delinquent assessment.

(2) Paragraph (1) shall apply notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days)

2004 Amendment. Act 190 amended subsec. (b)(1) and (2) and added subsec. (i).

Cross References. Section 4315 is referred to in sections 4102, 4302, 4319, 4405 of this title.

§ 4316. Other liens affecting cooperative.

(a) General rule.--Property of a proprietary lessee other than his cooperative interest is not subject to claims of the association's creditors, whether or not his cooperative interest is subject to those claims.

(b) Notice of foreclosure.--If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each proprietary lessee of a unit located within the real estate to be foreclosed and to the holder of the first security interest encumbering the cooperative interest with respect to such unit. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

Cross References. Section 4316 is referred to in sections 4102, 4311 of this title.

§ 4317. Association records.

(a) General rule.--During the period of declarant control, the association shall keep detailed financial records, including without limitation, a record of expenses paid by the declarant until the commencement of common expense assessments by the association under section 4314(a) (relating to assessments for common expenses), the commencement date of common expense assessments by the association and, for the period commencing on such date, a record for each cooperative interest in the cooperative, including those owned by the declarant, of the common expense assessments and the payment thereof.

(b) Sufficiency and examination of records.--The association shall keep financial records sufficiently detailed to enable the association to comply with section 4409 (relating to resales of cooperative interests). All financial and other records shall be made reasonably available for examination by any proprietary lessee and his authorized agents.

Cross References. Section 4317 is referred to in sections 4102, 4103, 4314, 4323 of this title.

§ 4318. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee pursuant to section 4217 (relating to termination of cooperative ownership) or 4313 (relating to insurance), the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

§ 4319. Termination of cooperative interest.

(a) **General rule.**--The association's right to terminate a cooperative interest shall be exercised by judicial sale of the cooperative interest in like manner as a foreclosure upon a leasehold interest in real estate. Where the articles of incorporation, declaration or bylaws provide a fixed price or formula for determining the maximum amount which the owner of the cooperative interest may receive upon transfer or where the articles of incorporation, declaration or bylaws provide an option, but not a right of first refusal, in the association to acquire the cooperative interest at a fixed price or price determined by formula and where the association has obtained a judgment authorizing the sale of the cooperative interest, the association may acquire the cooperative interest by payment of such amount to the owner of the cooperative interest or to the sheriff at any time prior to the sale. In case of judicial sale or payment to the sheriff in lieu of sale, liens and encumbrances shall be divested and proceeds distributed as if the right to terminate were deemed to be a lien for nonpayment of assessments under section 4315 (relating to lien for assessments), arising as of the date of commencement of the action.

(b) **Enforcement of proprietary lease.**--The association shall have the right, at its option, to enforce the provisions of the proprietary lease, including termination of the cooperative interest for default thereunder, under the provisions of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951, as amended, or by any other means available to it at law or in equity. In any such case, the court shall have the power to order judicial sale of the cooperative interest. In the event the proprietary lessee appeals an adverse decision in any court in which the association seeks to enforce its rights, the appeal may be dismissed, upon motion of the association, by the court in which the appeal is pending, if the proprietary lessee has not paid all the lessee's common expense assessments as they become due both prior to and during the pendency of the appeal, subject to any final judicial determination of the proprietary lessee's liability to make the payments if that is an issue in the appeal.

Cross References. Section 4319 is referred to in sections 4102, 4302 of this title.

§ 4320. Declarant delivery of items to association.

Except as set forth in paragraph (9), not later than 60 days after the required termination of the period of declarant

control pursuant to section 4303(d) (relating to executive board members and officers) or the declarant's earlier voluntary termination of control, the declarant shall deliver to the association all property of the proprietary lessees and of the association held by or controlled by the declarant, including, without limitation, the following items, if applicable, as to each cooperative or other owners' association operated by the association:

(1) The original or a certified copy or a photocopy of the recorded declaration and all amendments thereto. If a photocopy is delivered, the photocopy shall reflect the recording information and shall be accompanied by an affidavit executed by the declarant certifying the photocopy to be a true, correct and complete copy of the actual recorded declaration and all amendments thereto.

(2) The association articles of incorporation, if incorporated, with evidence of filing with the Department of State.

(3) A copy of the bylaws.

(4) A complete set of all executive board minutes and resolutions and all other books and records of the association.

(5) A complete copy of all rules and regulations that may have been adopted.

(6) Copies of all Federal, State and local tax returns filed by or on behalf of the association and copies of any tax-exempt elections made by or on behalf of the association.

(7) Copies of all past and current budgets of the association.

(8) Resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish or has relinquished control of the association.

(9) Not later than 90 days after the required termination of the period of declarant control pursuant to section 4303(d) or the declarant's earlier voluntary termination of control, a complete audit of the finances of the association for the time period between the last audit of the association's financial books and records and the date of termination of the period of declarant control, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, the costs of which audit are to be borne equally by the declarant and the association. If the cooperative consists of not more than 12 units, a warranty from the declarant to the association that the books and records of the association completely and accurately reflect all activities of the association from its inception through the date of termination of the period of declarant control may be substituted for the audit referred to in this paragraph.

(10) All association funds or control thereof.

(11) All tangible personal property that:

(i) may have been represented or should have been represented by the declarant in any public offering statement, sales materials or other writings to be part of the common elements that is otherwise property of the association; and

(ii) inventories of all of such personal property.

(12) A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation or remodeling of any buildings and improvements within the cooperative and in the construction and

installation of any mechanical components and equipment serving the buildings and improvements and property, if and to the extent the construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the declarant and substantially completed during the period commencing three years prior to the date of the first public offering statement regarding the cooperative. If no public offering statement is required for any unit in the cooperative, such period shall commence on the date of the recordation of the cooperative declaration or amendment thereto with respect to such improvements and end on the date by which compliance with this section is required. In the event the construction, rehabilitation, renovation, remodeling or installation was substantially completed within such period but not by or on behalf of the declarant, the obligation of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant and to use reasonable efforts to obtain and provide any such plans, drawings or specifications not within the possession of the declarant. If the construction, rehabilitation, renovation, remodeling or installation was substantially completed more than three years prior to the commencement of the period described in this paragraph, the obligations of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant. To the extent previously made available to the declarant, the declarant in all cases shall deliver to the association owners operating, care and maintenance manuals and other information regarding mechanical components and equipment serving any buildings and improvements in the cooperative.

(13) All insurance policies insuring the association and then in force.

(14) Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the cooperative, if and to the extent available.

(15) Any other permits issued by governmental bodies applicable to the cooperative property which are then currently in force, all notices of violation of governmental regulations then outstanding and uncured and all reports of investigations for the presence of hazardous conditions as defined in section 4403(a)(27) (relating to public offering statement; general provisions).

(16) Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the cooperative property or have supplied equipment or services to the cooperative property.

(17) A roster of proprietary lessees and mortgagees and their respective addresses and telephone numbers, if known, as shown on the declarant's records.

(18) Employment contracts in which the association is or is to be one of the contracting parties.

(19) Service and other contracts and leases in which the association is or is to be one of the contracting parties and service contracts in which the association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.

Cross References. Section 4320 is referred to in section 4219 of this title.

§ 4321. Limited equity cooperatives.

(a) General rule.--Except as is otherwise expressly provided in this section, limited equity cooperatives shall be created and operated pursuant to the other provisions of this act.

(b) Property classification.--Notwithstanding the provisions of section 4105 (relating to property classification of cooperative interests), unless the declaration filed for the creation of a limited equity cooperative expressly provides otherwise, the cooperative interests shall be personal property for all purposes.

(c) Alternation of units.--Notwithstanding the provisions of section 4210 (relating to alteration of units), if the association is responsible for the maintenance, repair and replacement of the units as well as the common elements and limited common elements, as provided in subsection (g), a proprietary lessee may make improvements or alterations to his unit only with the prior permission of the association, which shall not be unreasonably withheld, and otherwise in accordance with the provisions of the declaration and other provisions of law.

(d) Distribution to proprietary lessees upon termination of limited equity cooperatives.--Notwithstanding the provisions of section 4217 (relating to termination of cooperative ownership), distributions to proprietary lessees in limited equity cooperatives shall be no greater than the amount for which their respective cooperative interests could be transferred as restricted by the declaration and bylaws of the association.

(e) Distribution of residual proceeds upon termination of limited equity cooperatives.--If the declaration of a limited equity cooperative states that it is the declarant's intent that some or all units in the cooperative shall be affordable by low-income and moderate-income persons throughout the existence of the cooperative, then any assets of the association remaining after the distributions to lienholders and proprietary lessees as provided above and in the last sentence of section 4217(e) shall be distributed by the executive board to a public or private entity to be used in a manner consistent with the declarant's intent for the creation of additional housing affordable by low-income and moderate-income persons. If the balance of the funds is not so disbursed, the court of common pleas of the county in which the property is located is hereby authorized to distribute the funds as provided in this section.

(f) Value of cooperative interest.--The fair market value or actual monetary worth of a cooperative interest in a limited equity cooperative for the purposes of State and local taxation and for all purposes of this subpart, including, but not limited to, sections 4106 (relating to applicability of local ordinances, regulations and building codes) and 4217(e) and subsection (i), shall be the maximum amount for which the cooperative interest may be sold or otherwise transferred pursuant to the controlling provisions of the declaration and bylaws of the association.

(g) Upkeep of limited equity cooperative.--Notwithstanding the provisions of section 4307(a) (relating to upkeep of cooperative), unless the declaration expressly provides otherwise, limited equity cooperative associations shall be responsible for the maintenance, repair and replacement of all units as well as the common elements and limited common elements, except that a limited equity cooperative association

shall not be responsible for maintenance, repair or replacement necessitated by a proprietary lessee's own negligence, misuse or willful misconduct nor shall the association be responsible for repair, maintenance or replacement of items of personalty or realty not owned by the association.

(h) Subjecting a limited equity cooperative to a security interest.--Notwithstanding the provisions of section 4312(a) (relating to conveyance or encumbrance of cooperative) all or part of a limited equity cooperative may be subjected to a security interest by the association if persons entitled to cast at least 51% of the votes in the association, including 51% of the votes allocated to cooperative interests not owned by a declarant or any larger percentage the declaration specifies agree to that action. If fewer than all the units or limited common elements in a limited equity cooperative are to be subjected to a security interest, then all of the proprietary lessees of those units or the units to which those limited common elements are allocated must consent in order to subject them to a security interest, except that the provisions of the immediately preceding sentence shall govern unless the declaration provides, pursuant to subsection (g), that expenses related to the limited common elements shall be common expenses. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(i) Disposition of insurance proceeds.--The disposition of insurance proceeds due proprietary lessees in limited equity cooperatives under section 4313(g)(2)(ii) (relating to insurance) shall be limited to the amount for which the proprietary lessee's cooperative interest may be sold pursuant to the controlling provisions of the declaration and the bylaws of the association.

(j) Limited expenses.--Except as may be otherwise provided in the declaration, the provisions of section 4314(c) (relating to limited expenses) shall not apply to limited equity cooperatives, and expenses covered by that provision shall be deemed common expenses to be assessed against all cooperative interests.

Cross References. Section 4321 is referred to in sections 4105, 4106, 4210, 4217, 4307, 4312, 4313, 4314 of this title.

§ 4322. Alternative dispute resolution in cooperatives.

(a) Applicability.--

(1) A cooperative established after the effective date of this section shall adopt bylaws in compliance with this section.

(2) A cooperative established on or before the effective date of this section may adopt bylaws in compliance with the provisions of this section.

(b) Procedures.--

(1) The bylaws shall establish procedures for an alternative dispute resolution for disputes between:

- (i) two or more proprietary lessees; or
- (ii) a proprietary lessee and the association.

(2) Alternative dispute resolution shall be limited to disputes where all parties agree to alternative dispute resolution.

(3) Costs and fees associated with alternative dispute resolution, excluding attorney fees, shall be assessed equally against all parties to a dispute.

(c) Construction.--Nothing in this section shall be construed to affect or impair the right of a proprietary lessee,

declarant or association to pursue a private cause of action or seek other relief.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

2018 Amendment. Act 17 added section 4322.

Cross References. Section 4322 is referred to in section 4323 of this title.

§ 4323. Complaints filed with Bureau of Consumer Protection.

(a) General rule.--A proprietary lessee in good standing may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General in the event of a violation by the declarant or the association of sections 4308 (relating to meetings), 4309 (relating to quorums), 4310 (relating to voting; proxies) and 4317 (relating to association records).

(b) Condition.--If an alternative dispute resolution procedure is available to the proprietary lessee under the association's declaration, bylaws, rules or regulations, a complaint may not be filed by a proprietary lessee with the Bureau of Consumer Protection until the earlier of:

(1) the proprietary lessee exhausting the alternative dispute resolution procedure without a resolution between the proprietary lessee and the association; or

(2) at least 100 days have passed since the proprietary lessee commenced the alternative dispute resolution procedure and the proprietary lessee and association having not reached a resolution.

(c) Immediate filing.--A complaint may be filed by a proprietary lessee with the Bureau of Consumer Protection immediately if:

(1) an alternative dispute resolution procedure is not available to the proprietary lessee under the association's declaration, bylaws, rules or regulations; or

(2) the association refuses alternative dispute resolution under section 4322(b)(2) (relating to alternative dispute resolution in cooperatives).

(d) Construction.--Nothing in this section shall be construed to affect or impair the right of a proprietary lessee, declarant or association to pursue a private cause of action or seek other relief, as authorized by law.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

2018 Amendment. Act 17 added section 4323.

CHAPTER 44

PROTECTION OF COOPERATIVE INTEREST PURCHASERS

Sec.

4401. Applicability; waiver.

4402. Public offering statement; requirements.

4403. Public offering statement; general provisions.

4404. Public offering statement; cooperatives subject to development rights.

4405. Public offering statement; time shares.

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4408. Purchaser's right to cancel.

4409. Resales of cooperative interests.

4410. Escrow of deposits.

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- 4412. Cooperatives containing conversion buildings.
- 4413. Express warranties of quality.
- 4414. Implied warranty against structural defects.
- 4415. Effect of violations on rights of action.
- 4416. Labeling of promotional material.
- 4417. Declarant's obligation to complete and restore.
- 4418. Substantial completion of unit.

Enactment. Chapter 44 was added December 18, 1992, P.L.1426, No.176, effective in 60 days.

§ 4401. Applicability; waiver.

(a) General rule.--This chapter applies to all cooperative interests subject to this subpart, except as provided in subsection (b) and section 4414 (relating to implied warranty against structural defects) or as modified or waived by agreement of the purchaser of any cooperative interest the unit of which is intended for nonresidential use at the time of sale of the cooperative interest by the declarant or by agreement of the purchaser of any cooperative interest who is or intends to be in the business of buying or selling cooperative interests, subject to the following:

(1) A purchaser of a unit intended for residential use at the time of sale by the declarant may not modify or waive the provisions of section 4414 with regard to the unit and the common elements.

(2) With regard to any limited common element appurtenant only to nonresidential units, the unit owners of all such units shall have agreed to the modification or waiver and, with regard to any common elements, other than limited common elements, in a cooperative in which all units are restricted to nonresidential use, all unit owners shall have agreed to such modification or waiver.

(3) No modification or waiver shall prevent any proprietary lessee from indirectly benefiting from any provision in this chapter by reason of the proprietary lessee being an owner of a cooperative interest in the cooperative and a member of the association.

(b) When public offering statements or resale certificates unnecessary.--Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

(1) a gratuitous disposition of a cooperative interest;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency which has acquired the cooperative interest by judicial sale or deed in lieu of judicial sale;

(4) a disposition by foreclosure or transfer in lieu of foreclosure;

(5) a disposition to a person in the business of selling cooperative interests who intends to offer those cooperative interests to purchasers; or

(6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty.

(c) Single public offering statements.--If a cooperative interest is part of a cooperative and is also part of any other real estate regime in connection with the sale of which the delivery of a public offering statement or similar disclosure statement is required under the laws of this Commonwealth, a single public offering statement conforming to the requirements of sections 4403 (relating to public offering statement; general provisions), 4404 (relating to public offering statement; cooperatives subject to development rights), 4405 (relating to public offering statement; time shares) and 4406 (relating to

public offering statement; cooperatives containing conversion buildings), as those requirements relate to any real estate regimes in which the unit is located and to any other requirements imposed under the laws of this Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

Cross References. Section 4401 is referred to in sections 4102, 4409, 4412 of this title.

§ 4402. Public offering statement; requirements.

(a) **General rule.**--Except as provided in subsection (b), a declarant, prior to the offering of any cooperative interest to the public, shall prepare a public offering statement conforming to the requirements of sections 4403 (relating to public offering statement; general provisions), 4404 (relating to public offering statement; cooperatives subject to development rights), 4405 (relating to public offering statement; time shares) and 4406 (relating to public offering statement; cooperatives containing conversion buildings).

(b) **Transfer of declarant responsibility.**--A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (section 4304) or to a person in the business of selling cooperative interests who intends to offer cooperative interests in the cooperative for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) **Offering cooperative interest for own account.**--Any declarant or successor declarant or other person in the business of selling cooperative interests who offers a cooperative interest for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in section 4408(a) (relating to purchaser's right to cancel). The person who prepared all or a part of the public offering statement is liable under sections 4408 and 4415 (relating to effect of violations on rights of action) for any false or misleading statement and for any omission of any material fact with respect to that portion of the public offering statement which he prepared. If a person did not prepare a part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth in that part or for any omission of material fact from that part unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

Cross References. Section 4402 is referred to in sections 4102, 4408, 4410, 4411, 4413 of this title.

§ 4403. Public offering statement; general provisions.

(a) **General rule.**--Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the cooperative.

(2) A general description of the cooperative, including, to the extent possible, the types, number and its declarant's schedule of commencement and completion of construction of buildings and amenities that the declarant anticipates including in the cooperative, and a narrative description of the type and character of units offered, including a statement of the degree of completion to be provided or undertaken by the declarant of the units and the common

elements necessary for use and enjoyment of the units upon the conveyance by the declarant of the units offered.

(3) The number of units in the cooperative.

(4) Copies and a brief narrative description of the significant features of the declaration, any other recorded covenants, conditions, restrictions and reservations affecting the cooperative, the bylaws, the agreement of sale and any rules or regulations of the association; copies and a brief narrative description of any contracts, leases or agreements to be signed by purchasers prior to or at closing; and a brief narrative description of any other contracts, leases or agreements of a material nature to the cooperative.

(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for the year commencing on the anticipated date of the first conveyance to a purchaser and, thereafter, the current budget of the association, a statement of who prepared the budget and a statement of the budget's assumptions, including those concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.

(ii) A statement of any other reserves, including, without limitation, reserves for debt service on an obligation of the association and reserves for anticipated material capital expenditures or, if no provision is made for such other reserves, a statement to this effect.

(iii) The projected common expense assessment by category of expenditures for the association.

(iv) The projected monthly common expense assessment for each type of unit.

(6) Any:

(i) services not reflected in the budget that the declarant provides or expenses that he pays and that he expects may become at any subsequent time a common expense of the association; and

(ii) personal property not owned by the association but provided by the declarant and being used or to be used in the operation and enjoyment of the common elements which is or will be required in connection with the operation and enjoyment of the common elements after such personal property is no longer provided by the declarant and the projected common expense assessment for the association and for each type of cooperative interest attributable to each of those services and purchase or rental of such personal property.

(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(8) A description of any liens, defects or encumbrances on or affecting the title to the cooperative.

(9) A description of any financing for purchasers offered or arranged by the declarant.

(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(11) Except in the case of time shares (section 4405), a statement in at least ten-point boldface type, appearing on the first page of the public offering statement, that:

(i) Within 15 days (seven days in the case of a time-share estate) after a purchaser's receipt of a public offering statement or any amendment thereto that would have a material and adverse effect on the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a cooperative interest from a person required to deliver a public offering statement under this subpart.

(ii) If a person required to deliver a public offering statement under this subpart fails to provide a public offering statement and all amendments thereto to a purchaser before conveying a cooperative interest or if the public offering statement or any amendment does not comply with the requirements of this subpart, that purchaser may recover from such person damages, described in detail, as provided in section 4408(f) (relating to purchaser's right to cancel).

(iii) A description of such damages.

(iv) If a purchaser receives the public offering statement more than 15 days before signing a contract for the purchase of a cooperative interest, he cannot cancel the contract, except that, in accordance with subparagraph (i), he shall have the right to cancel, before conveyance, the contract within 15 days after receipt of any amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(12) A statement of any unsatisfied judgments or pending suits against the association and the status of any pending suits material to the cooperative of which a declarant has actual knowledge.

(13) A statement that any deposit made in connection with the purchase of a cooperative interest will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 4408 and that the name and address of the escrow agent will be set forth in the purchaser's agreement of sale.

(14) Any restrictions on:

(i) Use and occupancy of the units.

(ii) Alienation of the cooperative interests.

(iii) The amount for which a cooperative interest may be sold or on the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative.

(15) A description of all insurance coverage provided for the benefit of proprietary lessees, including the types and extent of coverage, and the extent to which such coverage includes or excludes improvements or betterments made to units.

(16) Any fees or charges to be paid by proprietary lessees, currently or in the future, for the use of the common elements, limited common elements and other facilities related to the cooperative in addition to monthly common expense assessments described in paragraph (5)(iv) and including, without limitation, user or membership fees that may be charged for the use or enjoyment of common elements, limited common elements and other facilities related to the cooperative.

(17) The extent to which financial arrangements have been provided for completion of all improvements which the declarant is obligated to build pursuant to section 4417 (relating to declarant's obligation to complete and restore).

(18) A brief narrative description of any zoning and other land use requirements affecting the cooperative.

(19) All unusual and material circumstances, features and characteristics of the cooperative and the units.

(20) In the case of a leasehold cooperative, at least the following information:

(i) The name and address of each lessor and his assignee, if any.

(ii) Any relationship between the declarant and any lessor or assignee.

(iii) A description of the leased property.

(iv) The rent and any provision in the lease for increases in the rent and any other charges or payments required to be paid by the lessee under the lease.

(v) Whether the lessee has any right to terminate the lease and, if so, the effect of such a termination on the cooperative.

(vi) The information contained in the declaration as required by section 4206 (relating to leasehold cooperatives).

(vii) The following notice in boldface type:
Purchasers should be aware that this is a leasehold cooperative, and the purchaser's interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability.

(21) A copy of a legal opinion, based on stated factual assumptions, given to the declarant by legal counsel selected by the declarant and licensed to practice law in the state in which the cooperative is situated stating:

(i) Whether the proprietary lessees will be entitled for Federal, State and local income tax purposes to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative.

(ii) That the proprietary lessees are entitled to rely upon the opinion.

(22) A statement as to the effect on every proprietary lessee if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(23) A description of how votes are allocated among the cooperative interests and a statement as to whether cumulative or class voting is permitted and, if so, under what circumstances. The statement shall also explain the operation of the cumulative or class voting.

(24) A description of any circumstances under which the association is or may become a master association or part of a master association.

(25) A statement of all governmental approvals and permits required for the use and occupancy of the cooperative indicating the name and expiration date of each approval or permit that has been obtained and, as to any governmental approvals or permits that have not been obtained, a statement indicating when each permit or approval is expected to be obtained and the person who shall bear the expense of obtaining each permit or approval.

(26) A statement as to whether there are any outstanding and uncured notices of violations of governmental requirements and, if there are any such notices of violations, a description of the alleged violation and a statement indicating when each violation is expected to be cured and the person who shall bear the expense of curing such violation.

(27) A statement as to whether the declarant has knowledge of any one or more of the following:

(i) Hazardous conditions, including contamination affecting the cooperative site by hazardous substances, hazardous wastes or the like or the existence of underground storage tanks for petroleum products or other hazardous substances.

(ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the cooperative site.

(iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority in order to correct any hazardous conditions and any action taken pursuant to those recommendations.

If the declarant has no knowledge of such matters, the declarant shall make a statement to that effect.

(b) Exceptions.--If a cooperative composed of not more than 12 units is not subject to any development rights and no power is reserved to a declarant to make the cooperative part of a larger cooperative, group of cooperatives or other real estate, a public offering statement may, but need not, include the information otherwise required by the narrative descriptions of documents required by subsection (a)(4).

(c) Amendment for material change in information.--Until all cooperative interests shall have been conveyed to persons not affiliated with the declarant, promptly after any material change in the information required by this section comes to the attention of a person required to deliver a public offering statement pursuant to section 4102(c) (relating to applicability of subpart), such person shall amend the public offering statement to report any material change in the information required by this section and shall deliver copies of such amendments to purchasers in accordance with section 4408(a).

(d) Providing and maintaining documents.--The declarant shall provide a copy of the public offering statement and all amendments thereto to the association, and the association shall maintain them in its records.

(Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 amended subsec. (a)(16).

Cross References. Section 4403 is referred to in sections 4102, 4103, 4302, 4320, 4401, 4402, 4404, 4405, 4406, 4409, 4418 of this title.

§ 4404. Public offering statement; cooperatives subject to development rights.

If the declaration provides that a cooperative is subject to any development rights, the public offering statement must disclose, in addition to the information required by section 4403 (relating to public offering statement; general provisions):

(1) The maximum number of units and the maximum number of units per acre that may be created.

(2) A statement of how many or what percentage of the units which may be created will be restricted exclusively

to residential use or a statement that no representations are made regarding use restrictions.

(3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use.

(4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights.

(5) A statement of the maximum extent to which the association's budget and each cooperative interest's allocated interests may be changed by the exercise of any development right described in paragraph (4).

(6) A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the cooperative will be compatible with existing buildings and improvements in the cooperative in terms of architectural style, quality of construction and size or a statement that no assurances are made in those regards.

(7) A general description of all other improvements that may be made and limited common elements that may be created within any part of the cooperative pursuant to any development right reserved by the declarant or a statement that no assurances are made in that regard.

(8) A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the cooperative pursuant to any development right reserved by the declarant or a statement that no assurances are made in that regard.

(9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the cooperative or a statement of the types and sizes planned or a statement that no assurances are made in that regard.

(10) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the cooperative or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(11) A statement that all restrictions in the declaration affecting use and occupancy of units and alienation of cooperative interests will apply to any units and cooperative interests created pursuant to any development rights reserved by the declarant or a statement of any differentiations that may be made as to those units and cooperative interests or a statement that no assurances are made in that regard.

(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

Cross References. Section 4404 is referred to in sections 4102, 4401, 4402 of this title.

§ 4405. Public offering statement; time shares.

If the declaration provides that ownership of cooperative interests or occupancy of any units is or may be in time shares, the public offering statement shall disclose, in addition to the information required by section 4403 (relating to public offering statement; general provisions):

- (1) The number and identity of units in which time shares may be created.
- (2) The total number of time shares that may be created in the cooperative.
- (3) The minimum duration of any time shares that may be created.
- (4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in section 4315 (relating to lien for assessments).
- (5) The projected common expense assessment for each time share and whether those assessments may vary seasonally.
- (6) A statement of any services not reflected in the budget which the declarant provides or expenses which he pays and which he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for each time share.
- (7) The extent to which time share owners are jointly and severally liable for the payment of common expenses assessments and other charges levied against that cooperative interest.
- (8) The extent to which a suit for partition may be maintained against a cooperative interest owned in time shares.
- (9) The extent to which a time share may become subject to lien arising out of claims against other time share owners of the same cooperative interest.
- (10) In lieu of the statement required under section 4403(a)(11), a statement in at least ten-point boldface type appearing on the first page of the public offering statement, that:

(i) Within seven days after purchaser's receipt of a public offering statement or any amendment thereto that would have a material and adverse effect on the rights or obligations of that purchaser, a purchaser, before conveyance, may cancel any contract for purchase of a time share from a declarant.

(ii) If a person required to deliver a public offering statement under this subpart fails to provide a public offering statement to a purchaser before conveying a time share or if the public offering statement or any amendment does not comply with the requirements of this subpart, the purchaser may recover from such person damages, described in detail, as provided in section 4408(f) (relating to purchaser's right to cancel).

(iii) If a purchaser receives the public offering statement more than seven days before signing a contract, he cannot cancel the contract, except that, in accordance with subparagraph (i), he shall have the right to cancel the contract within seven days after receipt of any amendment thereto that would have a material and adverse effect on the rights or obligations of that purchaser.

Cross References. Section 4405 is referred to in sections 4102, 4401, 4402, 4403 of this title.

§ 4406. Public offering statement; cooperatives containing conversion buildings.

(a) General rule.--The public offering statement of a cooperative containing any conversion building must contain, in addition to the information required by section 4403 (relating to public offering statement; general provisions):

(1) A statement by the declarant, based on a report prepared by an independent registered architect or professional engineer, describing:

(i) The age, present visible condition and, if known or ascertainable, the dates of construction, installation and major repairs of all structural components and mechanical and electrical installations, including, but not limited to, roofs, plumbing, heating, air conditioning and elevators material to the use and enjoyment of the cooperative.

(ii) The results of the inspection of the units and common elements required pursuant to section 4414(c) (relating to implied warranty against structural defects) for visible conditions that adversely affect the health or safety of the residential occupants.

(iii) The extent to which the report by the architect or professional engineer is based upon a visual inspection of the units as well as the common elements.

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1), including the current replacement cost of such item.

(3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(4) A statement by the declarant, based on a report prepared by an independent licensed exterminating company, describing the presence in the conversion building of, if any, visible pest conditions dangerous to health and safety, such as the presence of insects and rodents dangerous to health or safety, and outlining actions taken or to be taken to eliminate the existence of pest conditions dangerous to health or safety.

(b) Applicability of section.--This section applies only to units that are intended for residential use at the time of sale by the declarant of the cooperative interest of which the unit is a part.

Cross References. Section 4406 is referred to in sections 4102, 4401, 4402, 4414 of this title.

§ 4407. Public offering statement; cooperative securities.

If a cooperative interest is registered with the Securities and Exchange Commission of the United States at the time an offer of such cooperative interest is made, a declarant satisfies all requirements relating to the preparation of a public offering statement required by this subpart if he delivers to the purchaser a copy of the public offering statement or other disclosure statement filed with the Securities and Exchange Commission. An interest in a cooperative is not, in and of itself, a security under the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, and the offer and sale of cooperative interests in accordance with the requirements of this chapter shall not also be subject to the registration requirements of section 201 or 301 of the Pennsylvania Securities Act of 1972 or the promotional real estate sales requirements of the act of

Cross References. Section 4407 is referred to in section 4102 of this title.

§ 4408. Purchaser's right to cancel.

(a) Delivery of public offering statement.--In cases where delivery of the public offering statement is required under section 4402(c) (relating to public offering statement; requirements), a declarant shall provide a purchaser of a cooperative interest with a copy of the public offering statement and all amendments thereto not later than:

(1) the date the purchaser executes the contract of sale for such cooperative interest; or

(2) if no contract of sale is executed, 15 days before the time of conveyance of that cooperative interest.

After a public offering statement has been delivered to a purchaser of a cooperative interest, a person required to deliver a public offering statement pursuant to section 4402(c) shall provide to the purchaser copies of all amendments to the public offering statement made between the date of delivery of the public offering statement and the date of conveyance of that cooperative interest.

(b) Cancellation within 15 days.--Except as provided in subsection (c):

(1) Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a cooperative interest, a purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(2) A purchaser, before conveyance, may cancel a contract for the purchase of a cooperative interest within 15 days after receiving a copy of any amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(c) Cancellation within seven days.--Unless a purchaser of a time share is given the public offering statement more than seven days before execution of a contract for the purchase of a time share, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the public offering statement. A purchaser of a time share, before conveyance, may cancel a contract for the purchase of a time share within seven days after receiving a copy of any amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(d) Limitations as to amendments.--Without limiting those amendments that would be deemed not to produce material and adverse effects on the rights or obligations of purchasers, cancellation is not permitted under subsection (a), (b) or (c) if the amendment or possible future promulgation thereof was disclosed in the public offering statement previously delivered to the purchaser.

(e) Notice and effect of cancellation.--If a purchaser elects to cancel a contract pursuant to subsection (a), (b) or (c), he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(f) Damages for noncompliance.--If a person required to deliver a public offering statement pursuant to section 4402(c) fails to provide a purchaser to whom a cooperative interest is

conveyed with that public offering statement and all amendments thereto as required by subsection (a), (b) or (c) or, if the public offering statement or any amendment does not comply with the requirements of this subpart, the purchaser, in addition to any other rights to damages or relief, is entitled to receive from that person an amount equal to 5% of the sales price of the cooperative interest up to a maximum of \$5,000 or actual damages, whichever is the greater amount. A minor omission or error in the public offering statement or an amendment thereto that is not willful shall entitle the purchaser to recover only actual damages, if any.

Cross References. Section 4408 is referred to in sections 4102, 4402, 4403, 4405 of this title.

§ 4409. Resales of cooperative interests.

(a) Information supplied by proprietary lessee.--Except in the case of a sale where delivery of a public offering statement is required or unless the transaction is exempt under section 4401(b) (relating to applicability; waiver), a proprietary lessee shall furnish to a purchaser before execution of any contract of sale of a cooperative interest or, if there is no contract of sale, before the time of conveyance a copy of the declaration (other than the plats and plans), the bylaws and the rules or regulations of the association, including all amendments to such documents to the date of their delivery to the purchaser, and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the cooperative interest.

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling proprietary lessee and any surplus fund credits to be applied with regard to the cooperative interest pursuant to section 4314(h) (relating to assessments for common expenses).

(3) A statement of any other fees payable by proprietary lessees.

(4) A statement of any capital expenditures anticipated by the association for the current and two next succeeding fiscal years.

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects.

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.

(7) The current operating budget of the association.

(8) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant.

(9) A statement describing any insurance coverage provided for the benefit of proprietary lessees.

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto or any other portion of the cooperative.

(12) A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal thereof.

(13) Except where no public offering statement was prepared, a statement that the public offering statement and any amendments thereto are records of the association available for inspection by the purchaser.

(14) The most recent statement given to the proprietary lessee by the association stating the amount of the cooperative real estate taxes and mortgage or other interest allocated to the cooperative interest being sold.

(15) A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative.

(16) A statement as to whether the declaration provides for cumulative or class voting.

(17) A statement as to whether an agreement to terminate the cooperative has been submitted to the proprietary lessees for approval and remains outstanding.

(18) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements or knowledge of the existence of any hazardous conditions (section 4403(a)(27)) with respect to the unit, the limited common elements assigned thereto or any other portion of the cooperative.

(19) A statement of whether the cooperative is a master association or is part of a master association or could become a master association or part of a master association.

(20) A statement describing the ownership of cooperative interests, if any, or the occupancy of units, if any, which may be in time shares and the maximum number of time-share estates that may be created in the cooperative.

(21) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the cooperative and, if so, the information describing such right which was supplied by the declarant pursuant to section 4205 (relating to contents of declaration), if any.

(b) Information supplied by association.--The association, within ten days after a request by a proprietary lessee, shall furnish the documents and a certificate containing the information necessary to enable the proprietary lessee to comply with this section. A proprietary lessee providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in or delivered with the certificate.

(c) Liability for error or inaction by association.--A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) Purchase contract voidable.--The purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days)

2004 Amendment. Act 190 amended subsec. (c) and added subsec. (d).

Cross References. Section 4409 is referred to in sections 4102, 4302, 4317, 7302 of this title.

§ 4410. Escrow of deposits.

Any deposit, which shall not include any installment payment under an installment sales contract, made in connection with

the purchase or reservation of a cooperative interest from a person required to deliver a public offering statement pursuant to section 4402(c) (relating to public offering statement; requirements) shall be placed in escrow and held in this Commonwealth by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution or a licensed title insurance company, in an account or in the form of a certificate of deposit, designated solely for that purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:

(1) delivered to the declarant at closing or, in the case of the sale of a cooperative interest pursuant to an installment sales contract, upon the expiration of 30 days from the date of occupancy of the unit constituting a part of the cooperative interest;

(2) delivered to the declarant because of purchaser's default under a contract to purchase the cooperative interest; or

(3) refunded to the purchaser.

§ 4411. Release of liens.

(a) **Sale of cooperative interest.**--In the case of a sale of a cooperative interest where delivery of a public offering statement is required pursuant to section 4402(c) (relating to public offering statement; requirements), a seller shall, before conveying a cooperative interest, record or furnish to the purchaser releases of all liens affecting that cooperative interest and underlying real estate, unless the public offering statement discloses the amount of the real estate encumbered by and the effect of a default under a lien not being released or unless the purchaser expressly agrees to take subject to or assume liens not being released.

(b) **Conveyance to association.**--Before conveying real estate to the association, the declarant shall have that real estate released from liens, including, without limitation, real estate taxes, on that real estate unless the public offering statement discloses the amount of the real estate encumbered by and the effect of a default under a lien not being released.

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (b).

§ 4412. Cooperatives containing conversion buildings.

(a) **Notice of conversion.**--The declarant of every cooperative containing one or more conversion buildings shall give each of the residential tenants and subtenants, if any, lawfully in possession of a unit or units in a conversion building a conversion notice no later than one year before the declarant will require residential tenants and residential subtenants to vacate, subject to revocation of such notice in accordance with subsection (k). The conversion notice must set forth generally the rights of residential tenants and residential subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States certified or registered mail, return receipt requested, to the residential tenant and residential subtenant at the address of the unit and not more than one other mailing address provided by a residential tenant. Every notice shall be accompanied by a public offering statement concerning the proposed sale of cooperative interests within such conversion building or buildings. Except as otherwise provided in subsection (f), no such residential tenant or residential subtenant in a conversion building may be required to vacate the unit he leases earlier than one year after the conversion notice date, except by reason

of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy, including terms that apply to a period occurring in whole or in part after the conversion notice date, may not be altered, but may be enforced, during that period. Failure to give notice to a residential tenant or residential subtenant entitled to such notice pursuant to this subsection is a defense to an action for possession against such residential tenant or residential subtenant.

(b) Offer to tenant to purchase cooperative interest.--For six months after the conversion notice date, the declarant shall offer to convey the cooperative interest for each unit or proposed unit occupied for residential use in a conversion building to the tenant who leases that unit. If the tenant fails to purchase the cooperative interest during that six-month period, the offeror may not offer to dispose of an interest in that cooperative interest during the following six months at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection shall not apply to any cooperative interest in a conversion building if the unit which is part of that cooperative interest was, immediately prior to the conversion notice date, restricted or devoted exclusively to nonresidential use or the boundaries of which unit, after the creation of the cooperative, will not substantially conform to the boundaries of such unit on the conversion notice date.

(c) Effect of wrongful conveyance.--If a declarant, in violation of subsection (b), conveys a cooperative interest to a purchaser for value who has no knowledge of the violation, that conveyance extinguishes any right a tenant may have under subsection (b) to purchase that cooperative interest if the deed states that the declarant has complied with subsection (b), but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

(d) Notice to vacate.--If a conversion notice specifies a date by which a unit or proposed unit must be vacated, the conversion notice also constitutes a notice of termination of the tenant's lease, subject to revocation in accordance with subsection (k) and a notice to quit specified by section 501 of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951.

(e) Improper lease termination prohibited.--

(1) Nothing in this section permits termination of a lease in violation of its terms.

(2) Nothing in this section or in any lease shall prohibit a residential tenant, after receiving notice pursuant to subsection (a), from terminating any lease without any liability for such termination provided such tenant gives the building owner at least 90 days' written notice of the intent to terminate the lease.

(3) The declarant and, if different, the owner shall not engage in any activity of any nature which would coerce any residential tenant of a conversion building into terminating any lease, including, but not limited to, stampeding, harassing tenants or withholding normal services or repairs.

(f) Units leased to senior citizens and blind and disabled persons.--

(1) For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, on the conversion notice date, lawfully occupies the unit as his principal residence and is 62 years of age or older or is

disabled. For the purpose of this subsection, a person shall be deemed to be "disabled" if, on the conversion notice date, he is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impediment, including, but not limited to, blindness.

(2) Within 60 days after the conversion notice date, any tenant or subtenant in possession of a unit who believes that he is an eligible tenant or subtenant shall so notify the declarant and shall provide the declarant with proof of his eligibility. Any eligible tenant or subtenant who has established his eligibility shall be entitled to remain in possession of his unit for two years following the conversion notice date, notwithstanding any prior termination date in his lease, except by reason of nonpayment of rent, waste or conduct that disturbs other occupants' peaceful enjoyment of the cooperative, and the terms of the tenancy, including terms that apply to a time period after the conversion notice date, may not be altered, but may be enforced, during the time period between the original lease termination date and the expiration of this two-year period, except as is provided in paragraph (3).

(3) The monthly rental payable by the tenant during the time period between the later to occur of the original lease termination date or the first anniversary of the conversion notice date and the expiration of the two-year period described in paragraph (2) sentence shall be the same monthly rental as was payable for the month immediately preceding the original lease termination date, except that, at the landlord's option, such monthly rental may be increased by the lesser of 5% of such monthly rental or the same percentage increase as the percentage increase, if any, in the cost of living in the United States during the six-month time period commencing on the first day of the first full calendar month after the conversion notice date.

(4) Failure to comply with the provisions of this subsection is a defense to an action for possession.

(g) Tenant meetings.--With respect to any cooperative containing a conversion building with one or more units then occupied for residential use, at least 30 days before the conversion notice date, the declarant shall hold a tenant meeting open to the public in the municipality where the conversion is proposed at a place and time convenient to the persons who may be directly affected by the conversion. At least ten days' notice of the time and place of the meeting shall be given to tenants and subtenants in lawful possession of their units in the same manner as is required for the giving of the conversion notice and to the general public by a notice in a newspaper of general circulation in the area in which the cooperative is located, except that no notice to the general public need be given with respect to conversion buildings in cooperatives as to which the provisions of section 4401(b) (relating to applicability; waiver) are applicable. At such meeting, representatives of the declarant shall briefly describe the following and may, but shall not be required to, discuss other matters:

(1) The rights and obligations of tenants and subtenants pursuant to this section.

(2) Improvements, if any, then planned to be made to the cooperative.

(3) The anticipated approximate range of initial cooperative interest sales prices, but specific sales prices need not be provided.

(4) The anticipated approximate range of estimated monthly common expense liabilities for various types of cooperative interests but specific per cooperative interest estimates need not be provided.

(h) Waiver of right to purchase.--Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant or subtenant may waive his right to purchase a cooperative interest pursuant to subsection (b) if the waiver is in writing, is acknowledged and is given in consideration of:

(1) a written extension of the term of that tenant's tenancy and right of occupancy under this subpart beyond the time period required by subsection (a) or (f) as applicable;

(2) the tenant entering into an agreement to purchase another cooperative interest in the cooperative; or

(3) the tenant or subtenant making alternative living arrangements.

(i) Alteration of term of tenancy.--Notwithstanding any provisions of subsection (a) or (f), the terms of the tenancy of a tenant or subtenant may be altered with the express written consent of that tenant or subtenant, and such altered terms shall then be the terms of tenancy referred to in this section.

(j) Limitation to tenants in occupancy.--The provisions of this section shall apply only with respect to conversion buildings in which one or more residential tenants or residential subtenants is in lawful occupancy on the conversion notice date, and the only tenants who are entitled to exercise the rights granted under this section are residential tenants or residential subtenants:

(1) who are in lawful occupancy of a conversion building on the conversion notice date; or

(2) who commence their tenancy after the conversion notice date without having been notified in writing at or prior to the commencement of their tenancy that the property is then a cooperative and that they are not entitled to the rights granted under this section.

Such rights continue only so long as the lawful occupancy of the tenant or subtenant continues.

(k) Revocation of conversion notice.--A declarant may subsequently revoke a conversion notice if the declarant has expressly reserved the right of revocation in the conversion notice and if the notice of revocation:

(1) is given prior to the conveyance of any unit in the cooperative occurring after the conversion notice date other than a cooperative interest or cooperative interests conveyed to a successor declarant or as a result of a foreclosure of a mortgage on a cooperative interest or a deed in lieu thereof;

(2) is given in the same manner as is required for the giving of the conversion notice; and

(3) is given to all persons who were entitled to receive the conversion notice and who continue to be in lawful occupancy at the time such notice of revocation is given.

The giving of a notice of revocation revokes all rights granted under this section, but does not revoke the rights granted to residential tenants under subsection (a) or (f), and such rights shall be deemed to have been incorporated in each residential tenant's lease.

(Nov. 30, 2004, P.L.1499, No.190, eff. 60 days)

2004 Amendment. Act 190 amended subsec. (h)(1).

Cross References. Section 4412 is referred to in section 4103 of this title.

§ 4413. Express warranties of quality.

(a) General rule.--Express warranties made by any seller to a purchaser of a cooperative interest, if made or incorporated by reference in the public offering statement, if the seller is required to deliver a public offering statement under section 4402(c) (relating to public offering statement; requirements), or in a written statement or document signed by the seller and relied upon by the purchaser, are created as follows:

(1) Any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, or improvements to the cooperative that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the cooperative, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise.

(2) Any model or description of the physical characteristics of the cooperative, including plans and specifications of or for improvements, if incorporated by reference in a public offering statement or other written statement or document signed by the seller and relied upon by the buyer in accordance with this subsection creates an express warranty that the cooperative will conform substantially to the model or description.

(3) Any description of the quantity or extent of the real estate comprising the cooperative if incorporated by reference in a public offering statement or other written statement or document signed by the seller and relied upon by the buyer in accordance with this subsection, including, but not limited to, plats or surveys, creates an express warranty that the cooperative will conform to the description, subject to customary tolerances.

(4) A provision that a buyer of a cooperative interest may put a unit which is part of that cooperative interest only to a specified use is an express warranty that the specified use is lawful.

(b) Formal words unnecessary.--Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Transfer of warranty.--Any conveyance of a cooperative interest transfers to the purchaser all express warranties of quality made by previous sellers.

(d) Limitation of actions.--No action to enforce the warranty created by this section shall be commenced later than six years after the date of the writing which creates the warranty under subsection (a).

§ 4414. Implied warranty against structural defects.

(a) Definition.--As used in this section, "structural defects" means those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. Nothing in this section shall be construed to make the warrantor responsible

for any items of maintenance relating to the units or common elements.

(b) General rule.--A declarant warrants against structural defects in each of the units for two years from the date each is conveyed to a bona fide purchaser and all of the common elements for two years. Any conveyance of a cooperative interest during the two-year warranty period shall be deemed to transfer to the purchaser all of the warranties created under this section. The two years shall begin as to each of the common elements whenever the common element has been completed or, if later:

(1) as to any common element in real estate that may be added to the cooperative, at the time the first cooperative interest for a unit in such real estate is conveyed to a bona fide purchaser;

(2) as to any common element for which a development right to convert such common element to units or limited common elements has been reserved, at the time the first cooperative interest for a converted unit out of such common element is conveyed to a bona fide purchaser; and

(3) as to any common element within any other portion of the cooperative, at the time the first cooperative interest in the cooperative is conveyed to a bona fide purchaser.

(c) Scope and applicability of warranties.--A declarant of a cooperative containing one or more conversion buildings warrants:

(1) against structural defects in components installed in each of the conversion buildings by the declarant or in work done or improvements made by the declarant in each of the conversion buildings;

(2) that all units and common elements in each conversion building have been inspected for visible structural and mechanical defects and for other visible conditions that adversely affect the health or safety of residential occupants as required by section 4406(a)(1)(i) (relating to public offering statement; cooperatives containing conversion buildings), except that no such inspection is required of any unit the tenant or other lawful occupant of which does not permit such inspection to be conducted; and

(3) that any such defects and other visible conditions found have been repaired.

The warranties set forth in subsection (b) shall be applicable to any units and common elements that are located within a building containing or comprising one or more units that is not a conversion building. Otherwise, such declarant may offer the units, common elements or both in any conversion building in an "as is" condition. If any building containing or comprising units is a conversion building, then the warranty provisions of this subsection shall also apply to all common elements in the cooperative that are located outside of any conversion building and that are not located in a building containing one or more units that is not a conversion building. The declarant of a cooperative containing any conversion buildings may also give a more extensive warranty in writing. The times at which the warranties required by this subsection commence and the duration of such warranties shall be as provided in subsection (b).

(d) Exclusion or modification of warranty.--Except with respect to a purchaser of a unit for residential use, the warranty against structural defects:

(1) may be excluded or modified by agreement of the parties; and

(2) is excluded by expression of disclaimer, such as "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(e) Limitation of action.--No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins, provided, however, that the limitation period affecting a right of action by the association under this section shall be six years after the warranty begins or two years after the unit owners elect an executive board under section 4303(f) (relating to executive board members and officers), whichever is later.
(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (e).

Cross References. Section 4414 is referred to in sections 4401, 4406 of this title.

§ 4415. Effect of violations on rights of action.

If a declarant or any other person subject to this subpart fails to comply with any provision of this subpart or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this subpart. The court, in an appropriate case, may award reasonable attorney fees.

Cross References. Section 4415 is referred to in sections 4102, 4402 of this title.

§ 4416. Labeling of promotional material.

No promotional material may be displayed or delivered to prospective purchasers which describes or portrays improvements that are not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "MUST BE BUILT" or "NEED NOT BE BUILT."

§ 4417. Declarant's obligation to complete and restore.

(a) Completion.--The declarant shall complete all improvements depicted on any site plan or other graphic representation included in the public offering statement or in any promotional material distributed by or for the declarant unless that improvement is labeled "NEED NOT BE BUILT."

(b) Repair and restoration.--The declarant is subject to liability for the prompt repair and restoration to a condition compatible with the remainder of the cooperative of any portion of the cooperative affected by his exercise of rights reserved pursuant to or created by sections 4209 (relating to exercise of development rights), 4210 (relating to alteration of units), 4211 (relating to relocation of boundaries between adjoining units), 4212 (relating to subdivision of units), 4214 (relating to declarant's office, models and signs) and 4215 (relating to easement rights).

Cross References. Section 4417 is referred to in section 4403 of this title.

§ 4418. Substantial completion of unit.

(a) General rule.--In the case of a sale of a cooperative interest where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that cooperative interest may be conveyed until the declaration is recorded and unless all structural components and common element mechanical systems of the structure

containing or constituting such unit or units and the common elements appurtenant thereto are substantially completed in accordance with the descriptions set forth in both the declaration pursuant to section 4205 (relating to contents of declaration) and in the public offering statement pursuant to section 4403 (relating to public offering statement; general provisions). Such substantial completion shall be evidenced by a recorded certification of completion executed by an independent registered surveyor, architect or professional engineer with regard to any such structure.

(b) Sale prior to completion of unit.--Nothing contained in this subpart shall prevent the offering for sale of a cooperative interest or the execution of any agreement to sell and purchase a cooperative interest or any interest in a cooperative interest, as opposed to actual conveyance, prior to the completion of the unit or any other portion of the cooperative.

SUBPART D

PLANNED COMMUNITIES

Chapter

- 51. General Provisions
- 52. Creation, Alteration and Termination of Planned Communities
- 53. Management of Planned Community
- 54. Protection of Purchasers

Enactment. Subpart D was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

CHAPTER 51

GENERAL PROVISIONS

Sec.

- 5101. Short title of subpart.
- 5102. Applicability.
- 5103. Definitions.
- 5104. Variation by agreement.
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Enactment. Chapter 51 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

§ 5101. Short title of subpart.

This subpart shall be known and may be cited as the Uniform Planned Community Act.

§ 5102. Applicability.

(a) General rule.--This subpart applies to all planned communities created within this Commonwealth after the effective date of this subpart; but, if:

(1) such a planned community contains no more than 12 units and is not subject to any rights under section 5215 (relating to subdivision or conversion of units) to subdivide units or to convert into common elements or under section 5211 (relating to conversion and expansion of flexible planned communities) to add additional real estate, create units or limited common elements within convertible real estate or withdraw real estate, it is subject only to sections 5105 (relating to separate titles and taxation), 5106 (relating to applicability of local ordinances, regulations and building codes), 5107 (relating to eminent domain) and 5218 (relating to easement to facilitate completion, conversion and expansion) unless the declaration provides that the entire subpart is applicable; or

(2) such a planned community, regardless of the number of units, has common elements or limited common elements which include only storm water management facilities and related devices, real estate containing signage, lighting, landscaping, gates, walls, fences or monuments or open space and is not subject to any rights under section 5215 or under section 5211, it shall be subject only to the sections listed in paragraph (1), the provisions of sections 5103 (relating to definitions), 5104 (relating to variation by agreement), 5105, 5106, 5107, 5108 (relating to supplemental general principles of law applicable), 5109 (relating to construction against implicit repeal), 5110 (relating to uniformity of application and construction), 5111 (relating to severability), 5112 (relating to unconscionable agreement or term of contract), 5113 (relating to obligation of good faith) and 5114 (relating to remedies to be liberally administered) and the provisions of Chapter 53 (relating to management of planned community) and sections 5407 (relating to resales of units), 5408 (relating to escrow of deposits), 5409 (relating to release of liens) and 5411 (relating to warranty against structural defects) unless the declaration provides that the entire subpart is applicable. If a planned community is subject to the provisions of this paragraph, a declarant shall:

(i) include provisions in any sales agreement for a unit of such planned community which states that an association exists or may be created to own and manage certain generally described common elements or limited common elements and that there may be imposed by the association assessments upon unit owners for expenses related to the ownership, management, administration or regulation of such elements; and

(ii) prepare and record a declaration in the manner set forth in section 5205 (relating to contents of declaration; all planned communities) or 5206 (relating to contents of declaration for flexible planned communities) or covenants and restrictions as may be appropriate for the planned community. The declarant shall provide to the purchaser copies of the proposed or recorded declaration or covenants and restrictions, an actual or proposed budget of the planned community in accordance with the provisions of section 5402(a)(7) (relating to public offering statement; general provisions) and the actual or proposed bylaws of the association, provided that the purchaser has the right,

before conveyance, to cancel the agreement within seven days of the date of receiving a copy of the proposed or recorded declaration or covenants and restrictions, the actual or proposed budget and the actual or proposed bylaws.

As used in this paragraph, the term "open space" shall include an area of land or an area of water or a combination of land and water within a planned community intended for the use or enjoyment of residents, including, but not limited to, ball fields and courts, parks, walking, hiking or biking trails, wetlands, wooded areas and walkways and driveways providing access thereto or parking intended for users of such open space. The term does not include streets, utility lines or facilities or swimming pools or clubhouses owned or leased and maintained by the association.

(b) Retroactivity.--Except as provided in subsection (c), sections 5105, 5106, 5107, 5203 (relating to construction and validity of declaration and bylaws), 5204 (relating to description of units), 5218, 5219 (relating to amendment of declaration), 5223 (relating to merger or consolidation of planned community), 5302(a)(1) through (6) and (11) through (15) (relating to power of unit owners' association), 5311 (relating to tort and contract liability), 5315 (relating to lien for assessments), 5316 (relating to association records), 5407 (relating to resales of units) and 5412 (relating to effect of violations on rights of action) and section 5103 (relating to definitions), to the extent necessary in construing any of those sections, apply to all planned communities created in this Commonwealth before the effective date of this subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.

(b.1) Retroactivity.--

(1) Sections 5103, 5108, 5113, 5220(i) (relating to termination of planned community), 5222 (relating to master associations), 5302(a)(8)(i), (16) and (17) (relating to power of unit owners' association), 5303(a) and (b) (relating to executive board members and officers), 5307 (relating to upkeep of planned community), 5314 (relating to assessments for common expenses) and 5319 (relating to other liens affecting planned community), to the extent necessary in construing any of those sections, apply to all planned communities created in this Commonwealth before the effective date of this subpart, but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.

(2) Section 5303(c) and (d), to the extent necessary in construing any of those subsections, apply to all planned communities created in this Commonwealth before the effective date of this subpart, but those subsections apply only with respect to events and circumstances occurring 180 days after the effective date of this subsection and do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.

(c) Nonflexible planned communities.--If a planned community created within this Commonwealth before the effective date of

this subpart contains no more than 12 units and is not a flexible planned community, it is subject only to sections 5105, 5106, 5107 and 5218 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of subsection (d), in which case all the sections enumerated in subsection (b) apply to that planned community.

(d) Amendments to declarations, bylaws, plats and plans.--

(1) In the case of amendments to the declaration, bylaws and plats and plans of any planned community created before the effective date of this subpart:

(i) If the result accomplished by the amendment was permitted by law prior to this subpart, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or may be made under this subpart.

(ii) If the result accomplished by the amendment is permitted by this subpart and was not permitted by law prior to this subpart, the amendment may be made under this subpart.

(2) An amendment to the declaration, bylaws or plats and plans authorized by this subsection to be made under this subpart must be adopted in conformity with applicable law and with the procedures and requirements specified by the document being amended. If any such amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person.

(e) Nonresidential units.--This subpart does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the subpart does apply to that planned community. This subpart applies to a planned community containing both units which are restricted exclusively to nonresidential use and other units which are not so restricted only if the declaration so provides or if the real estate comprising the units which may be used for residential purposes would be a planned community in the absence of the units which may not be used for residential purposes.

(f) Planned communities outside Commonwealth.--This subpart does not apply to planned communities or units located outside this Commonwealth, but the public offering statement provisions under sections 5402 (relating to public offering statement; general provisions) through 5405 (relating to public offering statement; planned community securities) shall apply to all contracts for the disposition thereof signed in this Commonwealth by any purchaser unless exempt under section 5401(b)(2) (relating to applicability; waiver). (Mar. 24, 1998, P.L.206, No.27, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsec. (a) and added subsec. (b.1).

2004 Amendment. Act 37 amended subsecs. (a), (b) and (f).

§ 5103. Definitions.

The following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless specifically provided otherwise or unless the context clearly indicates otherwise:

"Additional real estate." Real estate that may be added to a planned community.

"Affiliate of a declarant." Any person who controls, is controlled by or is under common control with a declarant.

(1) A person "controls" a declarant if the person:

(i) is a general partner, officer, director or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20% of the capital of the declarant.

(2) A person "is controlled by" a declarant if the declarant:

(i) is a general partner, officer, director or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(3) Control does not exist if the powers described in paragraphs (1) and (2) are held solely as security for an obligation and are not exercised.

"Allocated interests." The common expense liability and votes in the association allocated to each unit.

"Alternative dispute resolution." A procedure for settling a dispute by means other than litigation, such as arbitration or mediation.

"Association" or "unit owners' association." The unit owners association organized under section 5301 (relating to organization of unit owners' association).

"Common elements." Common facilities or controlled facilities.

"Common expense liability." The liability for common expenses allocated to each unit under section 5208 (relating to allocation of votes and common expense liabilities).

"Common expenses." Expenditures made by or financial liabilities of the association, together with any allocations to reserves. The term includes general common expenses and limited common expenses.

"Common facilities." Any real estate within a planned community which is owned by the association, leased to the association or designated as common facilities, common area or open space or other similar term intended to identify a parcel in the declaration or the plats and plans recorded or referenced in the declaration. The term does not include a unit.

"Condominium." Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the portions of the real estate designated for common ownership are vested in the unit owners.

"Controlled facilities." Any real estate within a planned community, whether or not a part of a unit, that is not a common

facility but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the association.

"Conversion building." A building that, at any time before the conversion notice date with respect to the planned community in which the building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Conversion notice." The notice required to be given to tenants and subtenants by the terms of section 5410(a) (relating to planned communities containing conversion buildings).

"Conversion notice date." The date on which the conversion notice is placed in the United States mail, in the case of mailed notices, or is delivered to the unit leased by the recipient, in the case of hand-delivered notices.

"Convertible real estate." A portion of a flexible planned community not within a building containing a unit, within which additional units, limited common facilities or limited controlled facilities or any combination thereof may be created.

"Cooperative." Real estate owned by a corporation, trust, trustee, partnership or unincorporated association, if the governing instruments of that organization provide that each of the organization's members, partners, stockholders or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.

"Declarant."

(1) If a planned community has been created, the term means any of the following:

(i) Any person who has executed a declaration or an amendment to a declaration to add additional real estate. This subparagraph excludes a person holding interest in the real estate solely as security for an obligation; a person whose interest in the real estate will not be conveyed to unit owners; and, in the case of a leasehold planned community, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights.

(ii) A person who succeeds under section 5304 (relating to transfer of special declarant rights) to any special declarant rights.

(2) If the planned community has not yet been created, the term means any person who offers to dispose of or disposes of the person's interest in a unit to be created and not previously disposed of.

(3) If a declaration is executed by a trustee of a land trust, the term means the beneficiary of the trust.

"Declaration." Any instrument, however denominated, that creates a planned community and any amendment to that instrument.

"Development rights." Any right or combination of rights reserved by a declarant in the declaration:

(1) to add real estate to a planned community;

(2) to create units, common facilities, limited common facilities, controlled facilities or limited controlled facilities within a planned community;

(3) to subdivide units to convert units into common facilities or controlled facilities; or

(4) to withdraw real estate from a planned community.

"Disposition." A voluntary transfer to a purchaser of any legal or equitable interest in a unit or a proposed unit. The term does not include the transfer or release of a security interest.

"Executive board." The body, regardless of name, designated in the declaration to act on behalf of the association.

"Flexible planned community." A planned community containing withdrawable or convertible real estate or a planned community to which additional real estate may be added or a combination thereof.

"General common expenses." All common expenses other than limited common expenses.

"Identifying number." A symbol or address that identifies only one unit in a planned community.

"Immediate family." A parent, spouse, child, brother or sister.

"Independent reviewer." A person who is selected by the executive board of a planned community and satisfies all of the following:

(1) Holds a certificate as a certified public accountant issued by the Commonwealth, is licensed to practice law in this Commonwealth or is a vote management system.

(2) Is not a unit owner of the planned community, directly or indirectly.

(3) Has no immediate family relationship with a unit owner of the planned community or the planned community manager.

(4) Has no financial interest shared with a unit owner of the planned community or the planned community manager.

(5) If compensated by the declarant, a director, the association or the planned community manager, has disclosed the terms of the compensation to all unit owners of the planned community at a scheduled meeting.

"Installment sale contract." An executory contract for the purchase and sale of a unit or interest in a unit under which the purchaser is obligated to make more than five installment payments to the seller after execution of the contract and before the time appointed for the conveyance of title to the unit or interest in the unit.

"Interval estate." A combination of:

(1) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires; coupled with

(2) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate.

"Leasehold planned community." A planned community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the planned community or reduce its size.

"Limited common element." A limited common facility or a limited controlled facility.

"Limited common expenses." All expenses identified as such under section 5314(c) (relating to assessments for common expenses).

"Limited common facility." A portion of the common facilities allocated by or pursuant to the declaration or by the operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"Limited controlled facility." A portion of the controlled facilities, other than controlled facilities which are

themselves part of a unit, allocated by or pursuant to the declaration or by operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"Master association." An organization described in section 5222 (relating to master associations), whether or not it is also an association described in section 5301 (relating to organization of unit owners' association).

"Offer" or "offering." Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit other than as security for an obligation. The term does not include an advertisement in a newspaper or other periodical of general circulation or in a broadcast medium to the general public of a planned community not located in this Commonwealth if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the planned community is located.

"Original lease termination date." The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of the lease or sublease, after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date.

"Person." A natural person, corporation, partnership, association, trust, other entity or any combination thereof.

"Planned community." Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community. For purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes nonresidential campground communities.

"Purchaser." A person other than a declarant who, by means of a disposition, acquires a legal or equitable interest in a unit, other than either a leasehold interest of less than 20 years, including renewal options, or as security for an obligation. The term includes a person who will become a unit owner in a leasehold planned community upon consummation of the disposition.

"Real estate." Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

"Residential purposes." Use for dwelling or recreational purposes, or both.

"Residential subtenant." An individual lawfully occupying real estate for residential purposes under a sublease.

"Residential tenant." An individual lawfully occupying real estate for residential purposes under a lease.

"Special declarant rights." Rights reserved for the benefit of a declarant to:

(1) complete improvements indicated on plats and plans filed with the declaration under section 5210 (relating to plats and plans);

(2) convert convertible real estate in a flexible planned community under section 5211 (relating to conversion and expansion of flexible planned communities);

(3) add additional real estate to a flexible planned community under section 5211;

(4) withdraw withdrawable real estate from a flexible planned community under section 5212 (relating to withdrawal of withdrawable real estate);

(5) convert a unit into two or more units, common facilities or controlled facilities or into two or more units and common facilities or controlled facilities;

(6) maintain offices, signs and models under section 5217 (relating to declarant offices, models and signs);

(7) use easements through the common facilities or controlled facilities for the purpose of making improvement within the planned community or within any convertible or additional real estate under section 5218 (relating to easement to facilitate completion, conversion and expansion);

(8) cause the planned community to be merged or consolidated with another planned community under section 5223 (relating to merger or consolidation of planned community);

(9) make the planned community part of a larger planned community or group of planned communities under sections 5222 (relating to master associations) and 5223 (relating to merger or consolidation of planned community);

(10) make the planned community subject to a master association under section 5222 (relating to master associations); or

(11) appoint or remove an officer of the association or a master association or an executive board member during any period of declarant control under section 5303 (relating to executive board members and officers).

"Structural defects." As used in section 5411 (relating to warranty against structural defects), the term means defects in any structure which is a component of:

(1) any unit or common element; or

(2) any other portion of a unit or common element constructed, modified, altered or improved by or on behalf of a declarant;

any of which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of the structure and require repair, renovation, restoration or replacement.

"Time-share estate." An interval estate or a time-span estate.

"Time-span estate." A combination of:

(1) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate; coupled with

(2) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by the deed or by a recorded document referred to in the deed.

"Unit." A physical portion of the planned community designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 5205(5) (relating to contents of declaration; all planned communities) and a

portion of which may be designated by the declaration as part of the controlled facilities.

"Unit owner." A declarant or other person who owns a unit or a lessee of a unit in a leasehold planned community whose lease expires simultaneously with a lease the expiration or termination of which will remove the unit from the planned community. The term does not include a person having an interest in a unit solely as security for an obligation.

"Unit owner in good standing." A unit owner who is current in payment of assessments and fines, unless the assessments or fines are directly related to a complaint filed with the Bureau of Consumer Protection in the Office of Attorney General regarding section 5308 (relating to meetings), 5309 (relating to quorums), 5310 (relating to voting; proxies) or 5316 (relating to association records).

"Vote management system." A third-party vendor who operates a digital or subscription service that securely manages the conduct of elections and voting procedures.

"Withdrawable real estate." Real estate that may be withdrawn from a flexible planned community.
(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; May 4, 2018, P.L.96, No.17, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added the defs. of "immediate family," "independent reviewer" and "vote management system."

2018 Amendments. Act 17 added the defs. of "alternative dispute resolution" and "unit owner in good standing" and Act 84 amended the def. of "common facilities."

1998 Amendment. Act 37 amended the defs. of "special declarant rights" and "structural defects."

Cross References. Section 5103 is referred to in sections 5102, 7402 of this title.

§ 5104. Variation by agreement.

Except as expressly provided in this subpart, provisions of this subpart may not be varied by agreement, and rights conferred by this subpart may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this subpart or the declaration.

Cross References. Section 5104 is referred to in section 5102 of this title.

§ 5105. Separate titles and taxation.

(a) Title.--Except as provided in subsection (b), each unit that has been created, together with the interests, benefits and burdens created by the declaration, including, without limitation, the rights to any common facilities, constitutes a separate parcel of real estate. The conveyance or encumbrance of a unit includes the transfer of all of the rights, title and interest of the owner of that unit in the common facilities regardless of whether the instrument affecting the conveyance or encumbrance so states.

(b) Taxation and assessment.--If there is a unit owner other than a declarant, each unit must be separately taxed and assessed. The value of a unit shall include the value of that unit's appurtenant interest in the common facilities, excluding convertible or withdrawable real estate. The following shall apply:

- (1) Except as provided in paragraph (2), no separate assessed value shall be attributed to and no separate tax

shall be imposed against common facilities or controlled facilities.

(2) Convertible or withdrawable real estate shall be separately taxed and assessed until the expiration of the period during which conversion or withdrawal may occur.

(c) Certain additional prohibitions.--

(1) An association shall not impose any of the following fees against an owner or tenant of a unit in a planned community or against any person constructing, altering, renovating or repairing a unit in a planned community:

(i) a tapping, connection or other impact fee in excess of the actual direct cost incurred by the association for the connection or provision of water or sewer service to a building or improvement;

(ii) any fee for the right to construct, alter, renovate or repair a building or improvement except for an inclusive fee for the actual direct costs to the association of either:

(A) architectural, aesthetic or landscaping plan reviews or inspections of units, building siting and exteriors, if those reviews or inspections are required by provisions of the declaration or association bylaws or rules and regulations and if such provisions requiring a fee to be paid for such reviews or inspections were in existence on or before December 31, 1995; or

(B) if association imposed building construction standards or building codes are permitted under section 5106 (relating to applicability of local ordinances, regulations and building codes), building construction standards or building code review; and

(iii) any impact fee for road maintenance or road construction, except that the association shall not be precluded from recovering the cost of repair of any damage that is caused to roads or other common elements in the course of construction, alteration, renovation or repair.

(2) Except as specifically provided in this section and notwithstanding any fees or fee schedules or general rulemaking authority that existed prior to the effective date of this paragraph, an association shall not have the power to impose any fees or financial security related to construction, alteration, renovation or repair of a unit or exercise an access easement under section 5218 (relating to easement to facilitate completion, conversion and expansion).
(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsec. (c)(2).

Cross References. Section 5105 is referred to in section 5102 of this title.

§ 5106. Applicability of local ordinances, regulations and building codes.

(a) General rule.--A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit a planned community form of ownership or impose any requirement upon any structure in a planned community which it would not impose upon a physically identical structure under a different form of ownership.

(b) Current law unaffected.--Except as provided in subsection (a), no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate law, ordinance or regulation.

(c) Status.--

(1) The creation of a planned community under section 5201 (relating to creation of planned community) out of an entire lot, parcel or tract of real estate which has previously received approval for land development or subdivision, as those terms are defined in section 107 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or the conveyance of units in the planned community, shall not, in and of itself, constitute a subdivision or land development for the purpose of subdivision, land development or other laws, ordinances and regulations.

(2) The use of the planned community shall comply with zoning regulations applicable to the parcel of land or tract of real estate on which the planned community is created.

(3) Any person creating a planned community out of a vacant parcel or tract of real estate which has not been subject to subdivision or land development approval shall submit a copy of the planned community declaration and planned community plan to all municipalities in which the parcel or tract of real estate is located, unless the creation of the planned community is for an estate planning purpose of conveying units to family members or an entity controlled by family members so that the conveyance would not be subject to realty transfer taxes pursuant to Article XI-C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(4) Construction of any structure or building on any unit or common facility shall be subject to the provisions of any zoning, subdivision, land development, building code or other real estate law, ordinance or regulation.

(d) Building code.--An association shall be preempted by any federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community from imposing any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community. In the absence of a federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community, an association shall not have the power to impose any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community except:

(1) the BOCA National Building Code, 1996 edition (excluding Chapter 13, Energy Conservation) (the "BOCA Code"), for other than for one-family or two-family residential dwellings, together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment; or

(2) with respect to one-family or two-family residential dwellings, unless the declarant or a successor declarant elects to comply with the BOCA Code, the Council of American Building Officials (CABO) One and Two Family Dwelling Code, 1992 edition (excluding Part VII-Energy Conservation and Chapter 25 of Part V-Sewers and Private or Individual Sewage Disposal Systems), together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1),

as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment.

The applicable building code shall constitute the maximum and the only acceptable standard governing building structures. However, nothing in this section shall preclude an association, if and to the extent authorized by the declaration or association bylaws, rules and regulations, from providing for architectural review of units, landscaping, building exteriors and aesthetics or from implementing requirements that may be imposed from time to time by underwriters of insurance actually maintained on portions of the planned community.
(July 10, 2015, P.L.167, No.37, eff. 60 days)

2015 Amendment. Act 37 amended subsec. (c).

Cross References. Section 5106 is referred to in sections 5102, 5105 of this title.

§ 5107. Eminent domain.

(a) General rule.--If a unit is acquired by eminent domain or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for the unit and, except for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking, its appurtenant interest in the planned community reflected by its allocated common expenses liability, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, the unit's allocated votes and liabilities shall automatically be reallocated to the remaining units in proportion to the respective allocated votes and liabilities of those units before the taking. The association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection shall be a common facility.

(b) Acquisition of part of unit.--Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the planned community, whether or not any common facilities or controlled facilities are acquired, and shall compensate the association for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking. Upon acquisition, unless the decree otherwise provides, the following shall apply:

(1) The unit's appurtenant votes in the association and common expense liability shall be reduced on the basis specified in the declaration with respect to the reallocation of votes and common expense liability in the event of eminent domain or, if the declaration does not specify a basis, as initially allocated based on the formulae stated in the declaration under section 5208 (relating to allocation of votes and common expense liabilities).

(2) The portion of the appurtenant votes and common expense liability divested from the partially acquired unit shall be automatically reallocated to that unit and the

remaining units in proportion to the respective appurtenant votes and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated votes and liabilities.

(c) Acquisition of part of common facilities.--If part of the common facilities is acquired by eminent domain, the portion of the award attributable to the interest of the association in the common facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common facilities among the unit owners in proportion to the common expense liability attributable to the units before the taking, but any portion of the award attributable to the acquisition of a limited common facility shall be equally divided among the owners of the units to which that limited common facility was allocated at the time of acquisition or in any manner as provided in the declaration.

(d) Acquisition of part of controlled facilities.--If, as part of a unit acquired by eminent domain, controlled facilities are taken which benefit other units, that portion of the award attributable to the interest of the other units in the controlled facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining controlled facilities equally among the unit owners whose units were benefited by the controlled facilities that have been taken.

Cross References. Section 5107 is referred to in sections 5102, 5207, 5208, 5219, 5220, 5312 of this title.

§ 5108. Supplemental general principles of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this subpart, except to the extent inconsistent with this subpart.

Cross References. Section 5108 is referred to in section 5102 of this title.

§ 5109. Construction against implicit repeal.

Because this subpart is a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be implicitly repealed by subsequent legislation if that construction can reasonably be avoided.

Cross References. Section 5109 is referred to in section 5102 of this title.

§ 5110. Uniformity of application and construction.

This subpart shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart among states enacting it.

Cross References. Section 5110 is referred to in section 5102 of this title.

§ 5111. Severability.

If any provision of this subpart or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subpart which can be given effect without the invalid provisions or

application, and to this end the provisions of this subpart are severable.

Cross References. Section 5111 is referred to in section 5102 of this title.

§ 5112. Unconscionable agreement or term of contract.

(a) Powers of contract.--The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may:

- (1) refuse to enforce the contract;
- (2) enforce the remainder of the contract without the unconscionable clause; or
- (3) limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Parties may present evidence.--Whenever it is claimed or appears to the court that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors;
- (3) the effect and purpose of the contract or clause;
- (4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transaction does not of itself render the contract unconscionable.

Cross References. Section 5112 is referred to in section 5102 of this title.

§ 5113. Obligation of good faith.

Every contract or duty governed by this subpart imposes an obligation of good faith in its performance or enforcement.

Cross References. Section 5113 is referred to in section 5102 of this title.

§ 5114. Remedies to be liberally administered.

(a) General rule.--The remedies provided by this subpart shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this subpart or by other rule of law.

(b) Judicial enforcement of rights and obligations.--Any right or obligation declared by this subpart is enforceable by judicial proceeding.

Cross References. Section 5114 is referred to in section 5102 of this title.

§ 5115. Businesses operated by minors.

(a) Restrictions on licenses.--Notwithstanding any other provision of law, an association or an agency of an association may not require a license for a business that is operated on an occasional basis by a minor.

(b) Construction.--Nothing in this section may be construed to:

(1) Prohibit an association from enacting and enforcing association rules relating to the manner in which a business may be conducted by a minor, with the exception of a requirement that the minor obtain a license prior to engaging in a business.

(2) Void provisions of bylaws or declarations adopted in accordance with law prior to the effective date of this section.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Business." An enterprise carried on for the purpose of gain or economic profit. The term does not include an act of an employee rendering services to an employer.

"License." A license or permit required by an association to temporarily or permanently offer sale of goods or provision of services or otherwise operate an enterprise in the municipality in which the association is located.

"Minor." A person under 18 years of age.

"Occasional basis." A business that does not operate more than 84 days in a calendar year.

(June 30, 2021, P.L.184, No.34, eff. 60 days)

2021 Amendment. Act 34 added section 5115.

CHAPTER 52

CREATION, ALTERATION AND TERMINATION OF PLANNED COMMUNITIES

Sec.

- 5201. Creation of planned community.
- 5202. Unit boundaries.
- 5203. Construction and validity of declaration and bylaws.
- 5204. Description of units.
- 5205. Contents of declaration; all planned communities.
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- 5207. Leasehold planned communities.
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- 5210. Plats and plans.
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- 5213. Alteration of units.
- 5214. Relocation of boundaries between units.
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- 5218. Easement to facilitate completion, conversion and expansion.
- 5219. Amendment of declaration.
- 5220. Termination of planned community.
- 5221. Rights of secured lenders.
- 5222. Master associations.
- 5223. Merger or consolidation of planned community.

Enactment. Chapter 52 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

§ 5201. Creation of planned community.

A planned community may be created pursuant to this subpart only by recording a declaration executed in the same manner as a deed by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease, the expiration or termination of which will terminate the planned community or reduce its size. If the lessor is the Commonwealth, a municipal government or any agency of either, the lessor need not execute the declaration if it has previously given written notice of its filing and agreed to be bound by the provisions of this subpart, in which case the declaration shall be executed by the lessee in possession of the subject property. The declaration must be recorded in every county in which any portion of the planned community is located, must be indexed in the same records as are notarized for the recording of a deed and shall identify each declarant as the grantor and the name of the planned community as grantee.

Cross References. Section 5201 is referred to in sections 5106, 5207 of this title.

§ 5202. Unit boundaries.

Except as provided by the declaration:

(1) Subject to the provisions of paragraph (2), all space, fixtures and improvements within the boundaries of a unit are a part of the unit.

(2) If any fixture or improvement lies partially within and partially outside the designated boundaries of a unit, any portion of the fixture or improvement serving only that unit is a limited common element allocated solely to that unit, and any portion of the fixture or improvement serving more than one unit or any portion of the common facilities is a part of the common elements.

(3) Any fixtures or improvements designed or designated in the declaration to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Cross References. Section 5202 is referred to in sections 5103, 5209, 5210, 5302 of this title.

§ 5203. Construction and validity of declaration and bylaws.

(a) **Provisions severable.**--All provisions of the declaration and bylaws are severable.

(b) **Applications of rule against perpetuities.**--The rule against perpetuities may not be applied to defeat any provision of the declaration or this subpart or any instrument executed pursuant to the declaration or this subpart.

(c) **Conflict between declaration and bylaws.**--If there is a conflict between the declaration and the bylaws, the declaration shall prevail except to the extent the declaration is inconsistent with this subpart.

(d) **Effect of noncompliance on title to unit.**--Title to a unit and its appurtenant votes in the association shall not be rendered unmarketable or otherwise affected by any provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this subpart.

(e) **Effect of noncompliance.**--If the declarant preserved the rights identified in section 5205(13), (14), (15) or (16) (relating to contents of declaration; all planned communities) in the declaration or any of those provisions are otherwise applicable, the declarant's failure to include in the declaration any of the provisions or statements as required under each of those provisions shall not affect the

enforceability of the provisions or statements as if they were included in the declaration.

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 added subsec. (e).

Cross References. Section 5203 is referred to in section 5102 of this title.

§ 5204. Description of units.

After the declaration is recorded, a description of the unit which sets forth the name of the planned community, the recording data for the declaration, the county or counties in which the planned community is located and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws. Deeds, leases and mortgages of units shall be recorded in the same records as are maintained by the recorder for the recording of like instruments and indexed by the recorder in the same manner as like instruments are indexed.

Cross References. Section 5204 is referred to in section 5102 of this title.

§ 5205. Contents of declaration; all planned communities.

The declaration for a planned community must contain:

(1) The name of the planned community, which must include the words "planned community" or be followed by the words "a planned community."

(2) The name of every county in which any part of the planned community is situated.

(3) A legally sufficient description of the real estate included in the planned community.

(4) A description or delineation of the boundaries of each unit, including the unit's identifying number.

(5) A statement of the maximum number of units that may be created by the subdivision or conversion of units owned by the declarant pursuant to section 5215 (relating to subdivision or conversion of units).

(6) A description of any controlled facilities and the obligations of the association for the maintenance, improvement, repair, replacement, regulation, management, insurance or control of the controlled facilities.

(7) A description of any limited common facilities and any limited controlled facilities as provided in section 5209 (relating to limited common elements) and limited common expenses, if any, and how they are assessed.

(8) A description of any common facilities and controlled facilities not within the boundaries of any convertible real estate which may be allocated subsequently as limited common facilities or limited controlled facilities, with a statement that they may be so allocated and a description of the method by which the allocations are to be made.

(9) An allocation to each unit of a portion of the votes in the association and a percentage or fraction of the common expenses of the association in section 5208 (relating to allocation of votes and common expense liabilities).

(10) Any restrictions created by the declarant on use, occupancy and alienation of the units and any easement or license rights that unit owners are to have with respect to the use or enjoyment of any of the common elements and that are not contained in other documents which are recorded.

(11) The recording data for recorded easements and licenses appurtenant to or included in the planned community or to which any portion of the planned community is or may become subject.

(12) If all or any of the units are or may be owned in time-share estates, which units may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned community, it being intended that time-share estates shall not be permitted except if and to the extent expressly authorized by the declaration.

(13) If the declarant wishes to retain the special declarant right to cause section 5222 (relating to master associations) to become applicable to a planned community, then:

(i) an explicit reservation of such right;

(ii) a statement of the time limit upon which the option reserved under subparagraph (i) will lapse, together with and a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal; and

(iii) the information required to be included in the declaration by the provisions of section 5222.

(14) If the declarant wishes to retain the special declarant right to merge or consolidate the planned community pursuant to section 5223 (relating to merger or consolidation of planned community), then all of the following:

(i) An explicit reservation of such right.

(ii) A statement of the time limit upon which any option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the Pennsylvania Municipalities Planning Code or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal.

(iii) A statement of the name and location of each other planned community that may be subject to such a merger or consolidation. If such other planned

communities do not exist, then the declaration shall include the following:

(A) A statement of the extent to which the interest in the association, relative voting strength in the association and share of common expense liability of each unit in the planned community at the time the merger or consolidation is effectuated may be increased or decreased by actions pursuant to any option reserved under subparagraph (i), including the formulas to be used for those reallocations.

(B) Legally sufficient descriptions of each portion of real estate that is part of any other planned communities with which the planned community may merge or consolidate.

(C) If mergers or consolidations may be effectuated at different times, a statement to that effect, together with:

(I) either a statement fixing the boundaries of those planned communities and regulating the order in which they may be merged or consolidated or a statement that no assurances are made in those regards; and

(II) a statement as to whether, if any other planned communities are merged or consolidated with the planned community, all or any of such planned communities must be merged or consolidated.

(D) A statement of:

(I) the maximum number of units that may be created within the other planned communities, the boundaries of which are fixed under clause (C);

(II) how many of those units will be restricted exclusively to residential use; and

(III) the maximum number of units per acre that may be created within any such other planned communities, the boundaries of which are not fixed under clause (C).

(E) If any of the units that may be built within any of the other planned communities are not to be restricted exclusively to residential use, a statement with respect to each other planned community of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created in the planned community that are not restricted exclusively to residential use.

(F) A statement of the extent to which any buildings and units that may be part of the other planned communities will be compatible with the other buildings and units in the planned community in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(G) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any of the other planned communities or a statement of any differentiations that may be made as to those units.

(H) General descriptions of all other improvements and limited common elements that may be made or created within the other planned communities or a statement that no assurances are made in that regard.

(I) A statement of any limitations as to the locations of any buildings or other improvements that may be made within the other planned communities or a statement that no assurances are made in that regard.

(J) A statement that any limited common elements created within any other planned communities will be of the same general types and sizes as those within the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(K) A statement that the proportion of limited common elements to units created within the other planned communities will be approximately equal to the proportion existing within the planned community, a statement of any assurances in that regard or a statement that no assurances are made in that regard.

(L) A statement of whether and to what extent assurances made in the declaration regarding the other planned communities under clauses (C) through (K) apply if the other planned communities are not merged or consolidated with the planned community.

(iv) A summary description of the other provisions which materially change any rights, obligations or liabilities that will be included in the agreement of merger or consolidation if the right to merge or to consolidate is exercised.

(15) If a declarant wishes to retain the right to subject any portion of the planned community to an easement or license in favor of any real estate not included in the planned community or in favor of any person who is not an owner or occupant of a unit in the planned community, then an explicit reservation and description of such right and a description of the effects on the association and the unit owners of the easement or license, including, without limitation, any impact on the budget of the association.

(16) If a declarant designates or wishes to retain the right to designate in the declaration as a common facility any portion of a planned community or any improvement or facility then existing or contemplated for a planned community, then all of the following:

(i) An explicit reservation of such right and an identification and description of the portion of the planned community, improvement or facility.

(ii) A statement of when any portion of a planned community, improvement or facility will become a common facility and that the portion will be conveyed or leased to the association by the declarant or a successor to the interest of the declarant in the portion by the later of the date of conveyance or lease by the declarant of the last unit the declarant reserves the right to include in the planned community or the date of expiration of the rights under section 5211 (relating to conversion and expansion of flexible planned communities).

(iii) A statement that the obligation of the declarant to convey or lease to the association a portion of the planned community, improvement or facility shall

be binding on the declarant and any successor in interest of the declarant in the portion whether or not the successor succeeds to any special declarant right.

(iv) A statement of who will own the portion of the planned community, improvement or facility before a conveyance or lease to the association.

(v) A description of the procedure to be followed by the declarant and the association for the conveyance or lease to the association.

(vi) A statement that the portion of the planned community, improvement or facility will be conveyed or leased to the association for no consideration or, if additional consideration is to be given by the association for the conveyance, a description of the consideration and a description of the effects on the association and each unit owner of the association providing the consideration, including the impact on the budget of the association and common expense or other liabilities of the unit owners.

(vii) A description of the effect of the conveyance or lease to the association of the portion of the planned community, improvement or facility on the expenses and budget of the association and the common expense liability of the unit owners.

(viii) A statement that no conveyance or lease to the association of any portion of the planned community, improvement or facility shall occur until the portion has been completed unless a third-party guarantee, bond, escrow, letter of credit or other mechanism assuring completion has been provided by the declarant, in addition to the declarant's own guarantee of completion, for the benefit of the association and a statement that the third-party mechanism and the declarant's own guarantee shall not expire until completion of the portion of the planned community, improvement or facility.

(ix) As to any uncompleted improvement or facility that may become a common facility:

(A) a statement of the time for completion of such improvement or facility;

(B) a statement that a declarant is required to complete such improvement or facility by the later of the date of the conveyance or lease by the declarant or the last unit the declarant reserves the right to include in the planned community or the date of the expiration of the rights under section 5211;

(C) a statement that, until the facility or improvement is completed, the declarant shall be solely responsible for real estate taxes assessed against or allocable to the improvement or facility and for all other expenses in connection with the improvement or facility; and

(D) a description of any third-party guarantee, bond, escrow, letter of credit or other mechanism that the declarant shall provide, in addition to the declarant's own guarantee of completion, to assure, for the benefit of the association, completion of the improvement or facility and a statement of the time limit, if any, of the term of such third-party guarantee, bond, escrow, letter of credit or other mechanism or, if no such mechanism is to be provided

by the declarant, an explicit statement that no third-party guarantee, bond, escrow, letter of credit or other mechanism shall be provided by the declarant, and only the declarant's own guarantee shall be provided to assure completion of the improvement or facility.

(x) A statement that any portion of the planned community, an improvement or facility will be deemed to be completed upon the recording of a certificate executed by an independent registered surveyor, architect or professional engineer stating that the portion of the planned community, improvement or facility is substantially completed in accordance with the descriptions set forth in the declaration, the plats and plans and the public offering statement and so as to permit the use of such portion of the planned community, improvement or facility for its intended use.

(16.1) If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.

(16.2) Any fees or charges to be paid by unit owners, currently or in the future, for the use of the common elements, limited common elements and any other facilities related to the planned community.

(17) Any other matters the declarant deems appropriate.
(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.; Oct. 19, 2018, P.L.551, No.84, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 added par. (16.2).

2018 Amendment. Act 84 amended par. (16) intro. par. and added par. (16.1).

2013 Amendment . Act 37 amended pars. (13) and (14)(ii) and carried without amendment par. (14)(i). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

1998 Amendment. Act 37 amended par. (16).

Cross References. Section 5205 is referred to in sections 5102, 5103, 5203, 5206, 5209, 5211, 5219, 5222, 5223, 5402, 5407, 5414 of this title.

§ 5206. Contents of declaration for flexible planned communities.

The declaration for a flexible planned community shall include, in addition to the matters specified in section 5205 (relating to contents of declaration; all planned communities), all of the following:

(1) An explicit reservation of any options to create units, limited common elements or both within convertible

real estate or to add additional real estate to or withdraw withdrawable real estate from the planned community.

(2) A statement of the time limit upon which any option reserved under paragraph (1) will lapse, together with a statement of circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(i) ten years after the recording of the declaration; or

(ii) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal.

(3) A statement of any limitations on any option reserved under paragraph (1), other than limitations created by or imposed by operation of law, or a statement that there are no such limitations.

(4) A statement of the extent to which the interest in the association, relative voting strength in the association and share of common expenses liability of each unit in the planned community at the time the declaration is recorded may be increased or decreased by actions pursuant to any option reserved under paragraph (1), including the formulas to be used for those reallocations.

(5) Legally sufficient descriptions of each portion of convertible, additional and withdrawable real estate.

(6) If portions of any convertible, additional or withdrawable real estate may be converted, added or withdrawn at different times, a statement to that effect, together with:

(i) a statement fixing the boundaries of those portions and regulating the order in which they may be converted, added or withdrawn or a statement that no assurances are made in those regards; and

(ii) a statement as to whether, if any portion of convertible, additional or withdrawable real estate is converted, added or withdrawn, all or any particular portion of that or any other real estate must be converted, added or withdrawn.

(7) A statement of:

(i) the maximum number of units that may be created within any additional or convertible real estate or within any portion of either, the boundaries of which are fixed under paragraph (6);

(ii) how many of those units will be restricted exclusively to residential use; and

(iii) the maximum number of units per specified volume of space that may be created within any portions the boundaries of which are not fixed under paragraph (6).

(8) If any of the units that may be created within any additional or convertible real estate are not to be restricted exclusively to residential use, a statement with respect to each portion of the additional and convertible real estate of the maximum percentage of the real estate areas and the maximum percentage of the areas of all units

that may be created therein that are not restricted exclusively to residential use.

(9) A statement of the extent to which any buildings and units that may be erected upon each portion of the additional and convertible real estate will be compatible with the other buildings and units in the planned community in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(10) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any convertible or additional real estate or a statement of any differentiations that may be made as to those units.

(11) General descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the additional or convertible real estate or a statement that no assurances are made in that regard.

(12) A statement of any limitations as to the locations of any buildings or other improvements that may be made within convertible or additional real estate or a statement that no assurances are made in that regard.

(13) A statement that any limited common elements created within any convertible or additional real estate will be of the same general types and sizes as those within other parts of the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(14) A statement that the proportion of limited common elements to units created within convertible or additional real estate will be approximately equal to the proportion existing within other parts of the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(15) A statement of the extent to which any assurances made in the declaration regarding additional or withdrawable real estate under paragraphs (6) through (14) apply if any additional real estate is not added to or any withdrawable land is withdrawn from the planned community or a statement that those assurances do not apply if the real estate is not added to or withdrawn from the planned community.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.)

2013 Amendment . Act 37 amended par. (2). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

1998 Amendment. Act 37 amended pars. (4) and (8).

Cross References. Section 5206 is referred to in sections 5102, 5211, 5212, 5219, 5402 of this title.

§ 5207. Leasehold planned communities.

(a) **Recording lease and contents of declaration.--**A lease the expiration or termination of which may terminate the planned community or reduce its size shall be recorded in the same county where the declaration is recorded under section 5201 (relating to creation of planned community). Every lessor of those leases shall execute the declaration, and the declaration shall state the following:

(1) The recording data for the lease.

(2) The date on which the lease is scheduled to expire.

(3) A legally sufficient description of the real estate subject to the lease.

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights.

(5) Any right of the unit owners to remove any improvements after the expiration or termination of the lease or a statement that the unit owners do not have those rights.

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that the unit owners do not have those rights.

(b) Limitations on termination of leasehold interest.--After the declaration for a leasehold planned community is recorded, neither the lessor nor a successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Merger of leasehold and fee simple interests.--Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) Reallocation of interests if number of votes reduced.--If the expiration or termination of a lease decreases the number of units in a planned community, the allocated votes in the association and common expense liabilities shall be reallocated in accordance with section 5107 (relating to eminent domain) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

Cross References. Section 5207 is referred to in sections 5219, 5402 of this title.

§ 5208. Allocation of votes and common expense liabilities.

(a) General rule.--The declaration shall allocate a fraction or percentage of the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Such formulas may take into account unusual attributes of identified units if the formulas state how the deviation from the normal rule applies to such units.

(b) Flexible planned communities.--If units may be added, including by conversion of convertible real estate to one or more units, to or withdrawn from the planned community, the declaration shall state the formulas to be used to reallocate the fractions, as percentages of the allocated share of the common expenses of the association and the percentages of votes in the association, among all units included in the planned community after the addition or withdrawal.

(c) Votes.--

(1) Each unit shall be allocated one or more votes in the association. The declaration shall specify how votes in the association shall be allocated among the units and may provide:

(i) for different allocations of votes among units on particular matters specified in the declaration; and

(ii) for class voting on specified issues affecting a particular class of units if necessary to protect the

valid interests of the owners of such units and not affecting units outside of the class.

(2) Cumulative voting shall only be permitted if so provided expressly in the declaration and only for the purpose of electing members of the executive board. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this subpart. The declaration may provide that different allocations of votes shall be made to the units in particular matters specified in the declaration.

(d) Alteration or partition of allocations.--Except as provided in section 5107 (relating to eminent domain), 5211 (relating to conversion and expansion of flexible planned communities), 5212 (relating to withdrawal of withdrawable real estate), 5214 (relating to relocation of boundaries between units) or 5215 (relating to subdivision or conversion of units), the votes and common expense liability allocated to any unit may not be changed without the consent of all unit owners whose allocated votes and common expense liabilities are changed. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which it is allocated is void.

(e) Calculations for undivided interests.--Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the units must equal one if stated as a fraction or 100% if stated as percentages. If there is a discrepancy between the allocated common expense liability and the result derived from application of the formulas, the allocated common expense liability prevails.

Cross References. Section 5208 is referred to in sections 5103, 5107, 5205, 5311 of this title.

§ 5209. Limited common elements.

(a) Allocation.--Except for the limited common elements described in section 5202 (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated, distinguishing between limited common facilities and limited controlled facilities. That allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Reallocation.--Subject to any provisions of the declaration, a limited common element may be reallocated by a recorded assignment executed by the unit owners between or among whose units the reallocation is made or by an amendment to the declaration executed by the unit owners. The persons executing assignment or the amendment to the declaration shall provide a copy to the association.

(c) Common elements not previously allocated.--A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 5205(7) (relating to contents of declaration; all planned communities). The declaration may provide that the allocations shall be made by deeds or assignments executed by the declarant or the association or by amendments to the declaration.

Cross References. Section 5209 is referred to in sections 5205, 5210, 5211, 5219 of this title.

§ 5210. Plats and plans.

(a) General rule.--Plats and plans are a part of the declaration. Separate plats and plans are not required by this

subpart if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible. The plats and plans must contain, on the first page of the plats and plans, a certification that all of the plats and plans contain all information required by this section.

(b) Contents of plat.--Each plat must show all of the following:

- (1) The name, location and dimensions of the planned community.
- (2) The location and dimensions of all existing improvements.
- (3) The intended location and dimensions of any contemplated improvement to be constructed anywhere within the planned community labeled with "MUST BE BUILT" or "NEED NOT BE BUILT." Contemplated improvements within the boundaries of convertible real estate need not be shown, but, if contemplated improvements within the boundaries of convertible real estate are shown, they must be labeled "MUST BE BUILT" or "NEED NOT BE BUILT."
- (4) The location and dimensions of any convertible real estate, labeled as such.
- (5) The location and dimensions of any withdrawable real estate, labeled as such.
- (6) The location and dimensions of any additional real estate, labeled as such.
- (7) The extent of any encroachments by or upon any portion of the planned community.
- (8) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the planned community.
- (9) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (c) and that unit's identifying number.
- (10) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (c) and that unit's identifying number.
- (11) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate."
- (12) The distance between noncontiguous parcels of real estate comprising the planned community.
- (13) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in section 5202 (relating to unit boundaries) not shown on plans referred to in subsection (c).
- (14) All other matters customarily shown on land surveys.

(c) Contents of plans.--To the extent not shown or projected on the plats, plans of every building that contains or comprises all or part of any unit and is located or must be built within a portion of the planned community, other than within the boundaries of any convertible real estate, must show all of the following:

- (1) The location and dimensions of the vertical boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, and that unit's identifying number.

(2) Any horizontal unit boundaries, with reference to an established datum not shown on plats recorded under subsection (b), and that unit's identifying number.

(3) Any units that may be converted by the declarant to create additional units or common elements under section 5215 (relating to subdivision or conversion of units), identified appropriately.

(4) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in sections 5202 and 5209 (relating to limited common elements) not shown on plats recorded under subsection (b).

(d) Horizontal boundaries of unit partly outside building.--Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(e) Converting or adding real estate.--Upon converting convertible real estate or adding additional real estate taking action under section 5211 (relating to conversion and expansion of flexible planned communities), the declarant shall record new plats for that real estate conforming to the requirements of subsection (b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of any remaining portion.

(f) Converting units.--If a declarant converts any unit into two or more units or limited common elements or both under section 5215, the declarant shall record new plats and plans showing the location and dimensions of any new units and limited common elements thus created, as well as the location and dimension of any portion of that space not being converted.

(g) Alternative recording.--Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record new certifications of plats and plans previously recorded if those plats and plans show all improvements required by subsections (e) and (f).

(h) Who may make certifications.--Any certification of a plat or plan required by this section must be made by an independent registered surveyor, architect or professional engineer.

(i) Land development plans.--Final plans filed with and approved by a municipality in connection with any land development approvals may serve as plats and plans required under this section if:

(1) all of the contents required under subsections (b) and (c) are contained either in such final plans or in the declaration by specific reference to such plans;

(2) such final plans have been recorded; and

(3) a certification in accordance with subsection (a) is recorded and the certification specifies the recording information for final plans.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsec. (h).

1998 Amendment. Act 37 added subsec. (i).

Cross References. Section 5210 is referred to in sections 5103, 5211, 5219, 5413, 5414 of this title.

§ 5211. Conversion and expansion of flexible planned communities.

(a) General rule.--To convert convertible real estate or add additional real estate pursuant to an option reserved under section 5206 (relating to contents of declaration for flexible planned communities), the declarant shall prepare, execute and record an amendment to the declaration under section 5219 (relating to amendment of declaration) and comply with section 5210 (relating to plats and plans). The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate and reallocate votes in the association and common expense liabilities. The amendment must describe or delineate any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 5209 (relating to limited common elements).

(b) Creations within additional real estate.--Convertible or withdrawable real estate may be created within any additional real estate added to the planned community if the amendment adding that real estate includes all matters required by section 5205 (relating to contents of declaration; all planned communities) or 5206, as the case may be, and the plat includes all matters required by section 5210. This subsection does not extend the time limit on conversion or contraction of a flexible planned community imposed by the declaration under section 5206.

(c) Liability for expenses and right to income.--Until conversion occurs or the period during which conversion may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against convertible real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the planned community is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from convertible real estate inure to the declarant.

Cross References. Section 5211 is referred to in sections 5102, 5103, 5205, 5208, 5210, 5219, 5302, 5316, 5414 of this title.

§ 5212. Withdrawal of withdrawable real estate.

(a) General rule.--To withdraw withdrawable real estate from a flexible planned community pursuant to an option reserved under section 5206 (relating to contents of declaration for flexible planned communities), the declarant shall prepare, execute and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment must reallocate votes in the association and common expense liabilities to the remaining units in the planned community in proportion to the respective votes and liabilities of those units before the withdrawal. The reallocation is effective when the amendment is recorded.

(b) When withdrawal prohibited.--If a portion of a planned community was described under section 5206, that portion may not be withdrawn if any person other than the declarant owns a unit situated therein. If the portion was not so described, none of it is withdrawable if any person other than the declarant owns a unit situated therein.

(c) Liability for expenses and right to income.--Until withdrawal occurs or the period during which withdrawal may occur expires, whichever occurs first, the declarant alone is

liable for real estate taxes assessed against withdrawable real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the planned community is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from withdrawable real estate inure to the declarant.

Cross References. Section 5212 is referred to in sections 5103, 5208, 5219, 5414 of this title.

§ 5213. Alteration of units.

Subject to the provisions of the declaration and other provisions of law, all of the following apply:

(1) A unit owner may make any improvements or alterations to the unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the planned community.

(2) A unit owner may not change the appearance of the common elements or any other portion of the planned community other than portions of units that are not controlled facilities without the permission of the association. However, a unit owner may change the exterior appearance of a unit except any portion of a unit which is a controlled facility without the permission of the association.

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, a unit owner may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the planned community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

§ 5214. Relocation of boundaries between units.

(a) **General rule.**--Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated votes in the association and common expense liability, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them and, upon recording, is indexed in the name of the grantor and the grantee.

(b) **Recording.**--The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

Cross References. Section 5214 is referred to in sections 5208, 5219 of this title.

§ 5215. Subdivision or conversion of units.

(a) **General rule.**--If the declaration expressly so permits, a unit may be subdivided into two or more units or, in the case of a unit owned by a declarant, may be subdivided into two or more units, common elements or a combination of units and common elements. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit or upon application of a declarant to convert a unit,

the association shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing or converting that unit.

(b) Execution and contents of amendment.--The amendment to the declaration must be executed by the owner of the unit to be subdivided, must assign an identifying number to each unit created and must reallocate the allocated votes in the association and common expense liability formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

(c) Conversion of unit of declarant to common elements.--In the case of a unit owned by a declarant, if a declarant converts all of a unit to common elements, the amendment to the declaration must reallocate among the unit owners votes in the association and common expense liability formerly allocated to the converted unit on a pro rata basis, inter se.

Cross References. Section 5215 is referred to in sections 5102, 5205, 5208, 5210, 5219, 5316 of this title.

§ 5216. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the unit owner's willful misconduct nor relieve a declarant or any contractor, subcontractor or materialman or any other person of liability for failure to adhere to the plats and plans.

§ 5217. Declarant offices, models and signs.

(a) Common elements.--A declarant may maintain offices and models in the common element portion of the planned community only in connection with management of or sale or rental of units owned by the declarant in the planned community if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. At such time as a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard to such portions of the common elements so used unless the portions are removed promptly from the planned community in accordance with a right to remove reserved in the declaration. Upon the relocation of a model or office constituting a common element, a declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed common elements, and any personal property not so removed shall be deemed the property of the association.

(b) Signs.--Subject to any limitation in the declaration, a declarant may maintain signs in the declarant's units and on the common elements advertising units in the planned community owned by the declarant for sale or lease.

(c) Units.--A declarant shall have the right to locate, relocate and maintain offices and models used only in connection with management of or sale or rental of units owned by the declarant in the planned community in the declarant's unit or units in the planned community notwithstanding the fact that the declaration would otherwise preclude use of units for such purpose, but subject to all other provisions in the declaration, including, without limitation, modification or elimination of the declarant's rights under this subsection by specific reference thereto.

Cross References. Section 5217 is referred to in sections 5103, 5304, 5414 of this title.

§ 5218. Easement to facilitate completion, conversion and expansion.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights. In addition, without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during spring thaw conditions to restrict road usage by vehicles of more than ten tons gross weight, provided:

(1) such restrictions shall be imposed only on a week-by-week basis for an aggregate period not to exceed eight weeks during any calendar year;

(2) thaw conditions shall be reviewed by the association at least weekly; and

(3) signs shall be conspicuously posted by the association at all entrances to the planned community advising when and where such thaw restrictions are applicable.

An association shall not have the power to impose any fees or charges or require financial security, including, but not limited to, surety bonds, letters of credit or escrow deposits for the use of the easement rights described in this section; however, the declarant or owner who exercises the easement rights described in this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements which were damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

Cross References. Section 5218 is referred to in sections 5102, 5103, 5105, 5301, 5414 of this title.

§ 5219. Amendment of declaration.

(a) Number of votes required.--

(1) The declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least:

(i) 67% of votes in the association are allocated;

or

(ii) a larger percentage of the votes in the association as specified in the declaration; or

(iii) a smaller percentage of the votes in the association as specified in the declaration if all units are restricted exclusively to nonresidential use.

(2) Paragraph (1) is limited by subsection (d) and section 5221 (relating to rights of secured lenders).

(3) Paragraph (1) shall not apply to any of the following:

- (i) Amendments executed by a declarant under:
 - (A) section 5210(e) or (f) (relating to plats and plans);
 - (B) section 5211(a) (relating to conversion and expansion of flexible planned communities); or
 - (C) section 5212(a) (relating to withdrawal of withdrawable real estate).
- (ii) Amendments executed by the association under:
 - (A) subsection (f);
 - (B) section 5107 (relating to eminent domain);
 - (C) section 5207(d) (relating to leasehold planned communities);
 - (D) section 5209 (relating to limited common elements); or
 - (E) section 5215 (relating to subdivision or conversion of units).
- (iii) Amendments executed by certain unit owners under:
 - (A) section 5209(b);
 - (B) section 5214(a) (relating to relocation of boundaries between units);
 - (C) section 5215; or
 - (D) section 5220(b) (relating to termination of planned community).
- (iv) Amendments executed by a declarant which conform the maximum time limit for exercising declarant options to the time limit authorized by sections 5205(13) and (14) (relating to contents of declaration; all planned communities) and 5206(2) (relating to contents of declaration for flexible planned communities).

(b) Limitation of action to challenge amendment.--No action to challenge the validity of an amendment adopted by the association under this section may be brought more than one year after the amendment is recorded.

(c) Recording amendment.--The following shall apply:

(1) Every amendment to the declaration must be recorded in every county in which any portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. An amendment is effective only upon recording.

(2) Except for counties which do not maintain a uniform parcel identifier number system of indexing, all counties shall assign a master parcel number to each planned community, and every amendment to the declaration shall be indexed against the master parcel. If required by the county, an amendment may be indexed against a parcel assigned to each unit within the planned community, but no fees shall be charged to each unit unless the indexing against each parcel is requested by the declarant or association.

(3) The provisions of this subsection shall control over any conflicting provisions in any other statute, regulation or ordinance.

(d) When unanimous consent or declarant joinder required.--

(1) Except to the extent expressly permitted or required by other provisions of this subpart, without unanimous consent of all unit owners affected, no amendment may create or increase special declarant rights, alter the terms or provisions governing the completion or conveyance or lease of common facilities or increase the number of units or change the boundaries of any unit, the common expense liability or voting strength in the association allocated

to a unit or the uses to which any unit is restricted. In addition, no declaration provisions pursuant to which any special declarant rights have been reserved to a declarant shall be amended without the express written joinder of the declarant in such amendment.

(2) As used in this subsection, the term "uses to which any unit is restricted" shall not include leasing of units.

(e) Officer authorized to execute amendment.--Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) Technical corrections.--Except as otherwise provided in the declaration, if any amendment to the declaration is necessary in the judgment of the executive board to do any of the following:

(1) cure an ambiguity;

(2) correct or supplement any provision of the declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision of the declaration or with this subpart;

(3) conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust or units in planned community or so-called "PUD" projects, such as Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or

(4) comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the planned community or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents, tenants or employees;

then, at any time, the executive board may, at its discretion, effect an appropriate corrective amendment without the approval of the unit owners or the holders of liens on all or any part of the planned community, upon receipt of an opinion from legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.; Apr. 20, 2016, P.L.156, No.21, eff. 60 days; Nov. 4, 2016, P.L.1214, No.162, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 amended subsec. (f).

2016 Amendments. Act 21 amended subsec. (d) and Act 162 amended subsec. (c).

2013 Amendment. Act 37 amended subsec. (a)(3). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

2004 Amendment. Act 189 amended subsecs. (a) and (f).

Cross References. Section 5219 is referred to in sections 5102, 5211, 5303 of this title.

§ 5220. Termination of planned community.

(a) Number of votes required.--Except in the case of a taking of all the units by eminent domain in section 5107 (relating to eminent domain), a planned community may be terminated only by agreement of unit owners of units to which at least 80%, or such larger percentage specified in the

declaration, of the votes in the association are allocated. The declaration may specify a smaller percentage only if all of the units in the planned community are restricted exclusively to nonresidential uses.

(b) Execution and recording agreement and ratifications.--An agreement to terminate must be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of unit owners who are owners of record as of the date preceding the date of recording of the termination agreement. The termination agreement must specify the date it was first executed or ratified by a unit owner. The termination agreement shall become void unless it is recorded on or before the earlier of the expiration of one year from the date it was first executed and ratified by a unit owner or such date as shall be specified in the termination agreement. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. A termination agreement is effective only upon recording.

(c) Sale of real estate.--The association, on behalf of the unit owners, may contract for the sale of real estate in the planned community. The contract is not binding until approved under subsections (a) and (b). If any real estate in the planned community is to be sold by the association following termination, title to that real estate upon termination vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear in proportion to the respective interests of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this subpart or the declaration.

(d) Nonsale upon termination.--If the real estate constituting the planned community is not to be sold following termination, title to the common facilities and, in a planned community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the planned community vest in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (f), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit.

(e) Proceeds of sale.--Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors

of the association holding liens on the units which were recorded, filed of public record or otherwise perfected before termination may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(f) Respective interests of unit owners.--The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units and limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common expense liabilities immediately before the termination.

(g) Effect of foreclosure or enforcement of lien.--Except as provided in subsection (h), foreclosure or enforcement of a lien or encumbrance against the entire planned community does not of itself terminate the planned community. Foreclosure or enforcement of a lien or encumbrance against a portion of the planned community does not of itself withdraw that portion from the planned community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the planned community.

(h) Exclusion from planned community upon foreclosure.--If a lien or encumbrance against a portion of the real estate comprising the planned community has priority over the declaration and if the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the planned community.

(i) Ineffectiveness of termination provision.--In the case of a declaration that contains no provision expressly providing for a means of terminating the planned community other than a provision for a self-executing termination upon a specific date or upon the expiration of a specific time period, such termination provision shall be deemed ineffective if no earlier than five years before the date the planned community would otherwise be terminated, owners of units to which at least 80% of the votes in the association are allocated vote that the self-executing termination provision shall be annulled, in which event the self-executing termination provision shall have no force or effect.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 added subsec. (i).

Cross References. Section 5220 is referred to in sections 5102, 5219, 5303, 5312 of this title.

§ 5221. Rights of secured lenders.

(a) Secured lender approval.--The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to do any of the following:

(1) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board.

(2) Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding or receiving and distributing any insurance proceeds except under section 5312 (relating to insurance).

(b) Secured lender approval procedures.--If the declaration requires mortgagees or beneficiaries of deeds of trust encumbering the units to approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, then the executive board will provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified. If the notice to the secured lender, issued in accordance with the procedures set forth in this subsection, states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 45 days and the secured lender does not respond in writing within 45 days, then the secured lender will be deemed for all purposes to have approved the action specified in the notice. Written notice to the secured lender shall be given by certified, registered or first-class mail, evidenced by a United States Postal Service certificate of mailing, postage prepaid, at the address provided by the secured lender or, in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust of record and at the address to which the unit owner mails any periodic payment paid to the secured lender. The notice to the secured lender shall include a statement of the specified action, a copy of the full text of any proposed amendment and a form prepared by the association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.
(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

Cross References. Section 5221 is referred to in section 5219 of this title.

§ 5222. Master associations.

(a) Applicability of section.--If the declaration for a planned community provides that any of the powers described in section 5302 (relating to power of unit owners' association) with respect to the planned community are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more other planned communities or other incorporated or unincorporated associations, then, except as modified by this section, all provisions of this subpart applicable to unit owners' associations shall apply to any such master association insofar as its actions affect the planned community.

(b) Powers.--Unless a master association is acting in the capacity of an association described in section 5301 (relating

to organization of unit owners' association) with respect to a planned community which is part of the master association, it may exercise with respect to the planned community only such powers set forth in section 5302 and only to the extent expressly permitted in the declaration which provides for the delegation of powers from its planned community association to the master association and accepted by the master association, as indicated in the provisions of the declaration or other organizational documents of the master association.

(c) Liability of executive board members and officers.--If the declaration of a planned community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation. The officers and members of the governing board of the master association are subject to liability to the planned community association whose powers are delegated to the master association and the unit owners of the planned community on the same basis as officers and executive board members of the planned community immediately before such delegation of powers.

(d) Rights and responsibilities of persons electing governing body.--The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 5302, 5303 (relating to executive board members and officers), 5309 (relating to quorums), 5310 (relating to voting; proxies) and 5320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association with respect to the exercise of powers elected pursuant to a planned community declaration to the master association, but apply only to those persons who elect the governing body of a master association, whether or not those persons are otherwise unit owners within the meaning of this subpart.

(e) Election of master association governing body.--Notwithstanding the provisions of section 5303(e) with respect to the election of the executive board by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 5301, the instrument creating the master association and the declaration of each planned community of the organizational documents of other associations, the powers of which are assigned pursuant to the declaration or organizational documents or delegated to the master association, shall provide that the governing body of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all planned communities and other properties subject to the master association elect all members of the governing body of the master association.

(2) All members of the governing bodies of the planned community associations and other property owners' associations subject to the master association elect all members of the master association governing body.

(3) All unit owners of each planned community and other property owners' association subject to the master association elect specified members of the master association governing body.

(4) All members of the governing bodies of the planned communities and other property associations subject to the master association elect specified members of the master association governing body.

(e.1) Independent reviewer.--The instrument creating the master association and the declaration of each planned community of the organizational documents of other associations, the powers of which are assigned pursuant to the declaration or organizational documents or delegated to the master association, shall also provide that a vote by a unit owner in an election of the members of the master association governing body must be submitted by the unit owner to an independent reviewer who shall tally the results of the election and certify the results to the executive board and unit owner. In order to be eligible to vote in the election, a unit owner shall be in good standing with the association. The executive board shall present the official election results based on the certified election report from the independent reviewer at a meeting of the unit owners and shall enter the results in the meeting records. All votes by unit owners under this subsection shall be submitted to the independent reviewer in accordance with the approved methods of voting as provided under this subpart. This subsection shall only apply to a planned community with at least 500 units. If a planned community has less than 500 units, the master association may opt in to the requirements under this subsection by a vote of at least 51% of the votes collected from the unit owners in person, electronically or by absentee ballot which are in favor of the requirements under this subsection.

(f) Delegation of responsibility and authority.--The provisions of this section shall apply to a planned community upon any of the following:

(1) A date specified in the declaration or any amendment thereto from and after which this section shall apply to the planned community.

(2) An event or action that the declaration or any amendment thereto states shall cause this section to become applicable and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) the event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the planned community; and

(ii) a copy of such instrument has been sent to all unit owners.

(3) The declarant executes and records an instrument stating that this section shall thereafter apply to the planned community and that a copy of such instrument has been sent to the executive board and all unit owners. This paragraph shall be applicable only if the declarant shall have expressly reserved in the declaration, under section 5205(13) (relating to contents of declaration; all planned communities), the special declarant right to make this section applicable to the planned community and only if the instrument exercising such right has been recorded during the time period allowed for the exercise of such right.

(g) Delegation of all powers.--If all of the powers of a planned community association are delegated to a master association and accepted by the master association under subsection (b), then the governing body of the master association may act in all respects as the executive board of the planned community, and no separate executive board need be elected or exist.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added subsec. (e.1).

Cross References. Section 5222 is referred to in sections 5102, 5103, 5205, 5302 of this title.

§ 5223. Merger or consolidation of planned community.

(a) General rule.--Any two or more planned communities by agreement of the unit owners as provided in subsection (b) may be merged or consolidated into a single planned community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant planned community shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting planned communities have been established under this subpart.

(b) Requirements of agreement.--The merger or consolidation of two or more planned communities under subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting planned communities following approval by owners of units to which are allocated the percentage of votes in each planned community required to terminate such planned community. Any such agreement must be recorded in every county in which a portion of the planned community is located and is not effective until so recorded.

(c) Reallocations.--

(1) Every merger or consolidation agreement must provide for the reallocation of the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association among the units of the resulting planned community in one of the following manners:

(i) by stating the reallocations or the formulas upon which they are based; or

(ii) by stating the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association which are allocated to all of the units comprising each of the preexisting planned communities, and providing that the common expense liability, including both general and limited common expenses, and portion of the votes in the association for the resulting planned community shall be the same as was allocated to each unit formerly comprising a part of the preexisting planned community by the declaration of the preexisting planned community.

(d) Action by declarant.--Notwithstanding the provisions of subsections (a) and (b), if a declarant shall have expressly retained the special declarant right to merge or consolidate a planned community under section 5205(14) (relating to contents of declaration; all planned communities) and if the declarant shall have exercised such right within the time period allowed for such exercise by giving written notice to that effect to all unit owners accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be executed by the declarant rather than by the president of the association of that planned community and without the necessity for approval or consent by unit owners or their mortgagees, provided that the agreement is recorded within the

time period allowed for the exercise of this special declarant right.

Cross References. Section 5223 is referred to in sections 5102, 5103, 5205 of this title.

CHAPTER 53

MANAGEMENT OF PLANNED COMMUNITY

Sec.

- 5301. Organization of unit owners' association.
- 5302. Power of unit owners' association.
- 5303. Executive board members and officers.
- 5304. Transfer of special declarant rights.
- 5305. Termination of contracts and leases of declarant.
- 5306. Bylaws.
- 5307. Upkeep of planned community.
- 5308. Meetings.
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- 5310. Voting; proxies.
- 5311. Tort and contract liability.
- 5312. Insurance.
- 5313. Surplus funds.
- 5314. Assessments for common expenses.
- 5315. Lien for assessments.
- 5316. Association records.
- 5317. Association as trustee.
- 5318. Conveyance or encumbrance of common facilities.
- 5319. Other liens affecting planned community.
- 5320. Declarant delivery of items to association.
- 5321. Alternative dispute resolution in planned communities.
- 5322. Complaints filed with Bureau of Consumer Protection.

Enactment. Chapter 53 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

Cross References. Chapter 53 is referred to in section 5102 of this title.

§ 5301. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the first unit in the planned community is conveyed to a person other than a successor declarant. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the planned community, of all former unit owners entitled to distributions of proceeds under section 5218 (relating to easement to facilitate completion, conversion and expansion) or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

Cross References. Section 5301 is referred to in sections 5103, 5222 of this title.

§ 5302. Power of unit owners' association.

(a) General rule.--Except as provided in subsection (b) and subject to the provisions of the declaration and the limitations of this subpart, the association, even if unincorporated, may:

- (1) Adopt and amend bylaws and rules and regulations.
- (2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.

(3) Hire and terminate managing agents and other employees, agents and independent contractors.

(4) Institute, defend or intervene in litigation or administrative proceedings, or engage in arbitrations or mediations, in its own name on behalf of itself or two or more unit owners on matters affecting the planned community.

(5) Make contracts and incur liabilities.

(6) Regulate the use, maintenance, repair, replacement and modification of common elements and make reasonable accommodations or permit reasonable modifications to be made to units, the common facilities, the controlled facilities or the common elements, to accommodate people with disabilities, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.

(7) Cause additional improvements to be made as a part of the common facilities and, only to the extent permitted by the declaration, the controlled facilities.

(8) (i) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property other than common facilities; and

(ii) convey or subject to a security interest common facilities only under the provisions of section 5318 (relating to conveyance or encumbrance of common facilities).

(9) Grant easements, leases, licenses and concessions through or over the common facilities and, only to the extent permitted by the declaration, the controlled facilities.

(10) Impose and receive payments, fees or charges for the use, except as limited by other provisions of this subpart, rental or operation of the common elements other than the limited common elements described in section 5202(2) and (3) (relating to unit boundaries).

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard:

(i) Levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.

(ii) For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights, including, without limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.

(12) Impose reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by section 5407 (relating to resales of units) which shall be one charge that may be made by the association solely because of the resale or retransfer of any unit or statement of unpaid assessments. In addition, an association may impose a capital improvement fee, but no other fees, on the resale or transfer of units in accordance with the following:

(i) The capital improvement fee for any unit shall not exceed the annual assessments for general common expense charged to such unit during the most recently completed fiscal year of the association, provided that:

(A) in the case of resale or transfer of a unit consisting of unimproved real estate, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses

charged to such unit during the most recently completed fiscal year of the association;

(B) in the case of resale or transfer of a unit which was either created or added to the planned community in accordance with section 5211 (relating to conversion and expansion of flexible planned communities) at some time during the most recently completed fiscal year of the association but was not in existence for the entire fiscal year, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses charged to a unit comparable to such unit during the most recently completed fiscal year of the association; and

(C) capital improvement fees are not refundable upon any sale, conveyance or any other transfer of the title to a unit.

(ii) Capital improvement fees allocated by an association must be maintained in a separate capital account and may be expended only for new capital improvements or replacement of existing common elements and may not be expended for operation, maintenance or other purposes.

(iii) No capital improvement fee shall be imposed on any gratuitous transfer of a unit between any of the following family members: spouses, parent and child, siblings, grandparent and grandchild, nor on any transfer of a unit by foreclosure sale or deed in lieu of foreclosure to a secured lending institution as defined by the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law.

(iv) No fees may be imposed upon any person who:

(A) acquires a unit consisting of unimproved real estate and signs and delivers to the association at the time of such person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months of its acquisition; and

(B) completes such reconveyance within such 18 months.

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(14) Exercise any other powers conferred by this subpart, the declaration or bylaws.

(15) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association.

(16) Exercise any other powers necessary and proper for the governance and operation of the association.

(17) Assign its right to future income, including the right to receive common expense assessments. Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.

(18) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions of section 5222 (relating to master associations) and accept an assignment or delegation of powers from one or more planned communities or other incorporated or unincorporated associations.

(b) Restrictions on limitations in declaration.--Notwithstanding subsection (a), the declaration

may not impose limitations on the power of the association to deal with declarants which are more restrictive than the limitations imposed on the power of the association to deal with other persons. Any exercise of a power under subsection (a) (7), (8) or (9) which would materially impair quiet enjoyment of a unit shall require the prior written approval of the owner of that unit.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (a) (11).

2004 Amendment. Act 189 amended subsec. (a) (4), (6), (8), (12) and (17).

Cross References. Section 5302 is referred to in sections 5102, 5222, 5315 of this title.

§ 5303. Executive board members and officers.

(a) Powers and fiduciary status.--Except as provided in the declaration, in the bylaws, in subsection (b) or in other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith; in a manner they reasonably believe to be in the best interests of the association; and with care, including reasonable inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances. In managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the investment of trust funds and shall be governed in the management of the association's reserve funds by 20 Pa.C.S. § 7203 (relating to prudent investor rule). In performing any duties, an officer or executive board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more other officers or employees of the association whom the officer or executive board member reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the officer or executive board member reasonably believes to be within the professional or expert competence of that person.

(3) A committee of the executive board upon which the officer or executive board member does not serve, designated in accordance with law, as to matters within its designated authority, which committee the officer or executive board member reasonably believes to merit confidence.

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with care in the manner set forth in this section.

(b) Limitation on authority.--The executive board may not act on behalf of the association to amend the declaration under section 5219 (relating to amendment of declaration), to terminate the planned community under section 5220 (relating

to termination of planned community) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members under subsection (e), but the executive board may fill vacancies in its membership for the unexpired portion of any term. The executive board shall deliver to all unit owners copies of each budget approved by the executive board and notice of any capital expenditure approved by the executive board promptly after such approval. In addition to other rights conferred by the declaration, bylaws or this subpart, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board within 30 days after approval.

(c) Status during period of declarant control.--

(1) Subject to subsection (d), the declaration may provide for a period of declarant control of the association during which a declarant or persons designated by the declarant may appoint and remove the officers and members of the executive board.

(2) Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period of not more than:

(i) seven years in the case of a flexible planned community containing convertible real estate or to which additional real estate may be added; and

(ii) five years in the case of any other planned community.

(3) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(i) sixty days after conveyance of 75% of the units which may be created to unit owners other than a declarant;

(ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(iii) two years after any development right to add new units was last exercised.

(4) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period. In that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(d) Election of members during transfer of declarant control.--Not later than 60 days after conveyance of 25% of the units which may be created to unit owners other than a declarant, at least one member and not less than 25% of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50% of the units which may be created to unit owners other than a declarant, not less than 33% of the members of the executive board shall be elected by unit owners other than the declarant.

(e) Election of members and officers following declarant control.--

(1) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom shall be unit owners, provided that the executive board may

consist of two members, both of whom shall be unit owners, if the planned community consists of two units. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(2) In the event that the election of the executive board by the unit owners fails to take place not later than the termination of a period of declarant control as provided in this section, then a special meeting of the unit owners may be called for such purpose by any member of the executive board elected by the unit owners or, if there is no such member of the executive board, unit owners entitled to cast at least 10% of the votes in the association.

(f) Removal of members.--Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant. (Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (e).

2004 Amendment. Act 189 amended subsec. (a).

Cross References. Section 5303 is referred to in sections 5102, 5103, 5222, 5304, 5305, 5306, 5311, 5320, 5411 of this title.

§ 5304. Transfer of special declarant rights.

(a) Execution and recording instrument of transfer.--No special declarant right created or reserved under this subpart may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee indices. The instrument is not effective unless executed by the transferee.

(b) Liability of declarant following transfer.--Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed on a declarant by this subpart. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with any successor for any obligations or liabilities of the successor relating to the planned community.

(3) If a transferor retains any special declarant rights but transfers one or more other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this subpart or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of

the transferor and to whom the special declarant right has not previously been assigned.

(c) Rights of purchaser in foreclosure, etc., proceedings.--Unless otherwise provided in a mortgage instrument or deed of trust, in case of mortgage foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust or sale under 11 U.S.C. (relating to bankruptcy) or under receivership proceedings of any units owned by a declarant or real estate in a planned community subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate held by that declarant or only to any rights reserved in the declaration under section 5217 (relating to declarant offices, models and signs) and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Rights of declarant following foreclosure, etc.--Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust or sale under 11 U.S.C. or under receivership or similar proceedings of all units and other real estate in a planned community owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control under section 5303(d) (relating to executive board members and officers) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) Liabilities and obligations of successors.--The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this subpart or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4), who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this subpart or the declaration on any of the following:

(i) A declarant insofar as the obligation or liability relates to the exercise or nonexercise of special declarant rights.

(ii) The successor's transferor, other than any of the following:

(A) Misrepresentations by any previous declarant except to the extent knowingly continued or permitted to continue without correcting such misrepresentations.

(B) Warranty obligations on improvements made by any previous declarant or made before the planned community was created.

(C) Breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the executive board.

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs under section 5217, if the successor is not an affiliate of a

declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant except the obligation to provide a public offering statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units or an instrument conveying solely special declarant rights under subsection (c) may declare his intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of section 5303(d) for the duration of any period of declarant control; and any attempted exercise of those rights is void. As long as a successor declarant may not exercise special declarant rights under this paragraph, the successor is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under section 5303(d).

(f) Limitation on liability of successor.--Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant other than claims and obligations arising under this subpart or the declaration.

Cross References. Section 5304 is referred to in section 5103 of this title.

§ 5305. Termination of contracts and leases of declarant.

(a) General rule.--If entered into before the executive board elected by the unit owners under section 5303(e) (relating to executive board members and officers) takes office, any of the following may be terminated without penalty by the association at any time after the executive board elected by the unit owners under section 5303(e) takes office upon not less than 90 days' notice to the other party:

(1) Any management contract, employment contract or lease of recreational or parking areas or facilities.

(2) Any other contract or lease to which a declarant or an affiliate of a declarant is a party.

(3) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

(b) Exception.--This section does not apply to any lease the termination of which would terminate the planned community or reduce its size unless the real estate subject to that lease was included in the planned community for the purpose of avoiding the right of the association to terminate a lease under this section.

Cross References. Section 5305 is referred to in section 5402 of this title.

§ 5306. Bylaws.

(a) Mandatory provisions.--The bylaws of the association shall provide for all of the following:

(1) The number of members of the executive board and the titles of the officers of the association.

(2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify.

(3) The qualifications, powers and duties, terms of office and manner of electing executive board members and officers and removing executive board members and officers under section 5303(f) (relating to executive board members and officers) and filling vacancies.

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.

(5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.

(6) The method of amending the bylaws. The following apply:

(i) The bylaws may be amended only by vote or agreement of unit owners of units to which at least:

(A) fifty-one percent of votes in the association are allocated;

(B) a larger majority of the votes in the association as specified in the bylaws; or

(C) a smaller majority of the votes in the association as specified in the bylaws if all units are restricted exclusively to nonresidential use.

(ii) The vote may be taken only at a scheduled meeting and following notice to the unit owners as provided under section 5308 (relating to meetings) that was advertised 14 days in advance to the unit owners. Absentee voting shall be permitted to unit owners provided that the ballots must be submitted to an independent reviewer by the commencement of the scheduled meeting.

(b) Other provisions.--Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(c) Corrective amendments.--Except as otherwise provided in the bylaws or code of regulations, if any amendment to the bylaws or code of regulations is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the bylaws or code of regulations that is defective, missing or inconsistent with any other provision thereof, with the declaration or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in planned communities or so-called "PUD projects," cooperative projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the planned community or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents, tenants or employees, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the unit owners or the holders of any liens on all or any part of the planned community or association, upon receipt by the executive board of an opinion from legal counsel who is independent from the

declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Mar. 27, 2020, P.L.35, No.11, eff. 60 days; Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 amended subsec. (a)(3) and (6).

2020 Amendment. Act 11 added subsec. (c).

§ 5307. Upkeep of planned community.

(a) General rule.--Except to the extent provided by the declaration, subsection (b) or section 5312 (relating to insurance), the association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners and to their agents or employees access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage or the association if it is responsible is liable for the prompt repair of the damage.

(b) Nonresidential planned communities.--If any unit in a planned community all of whose units are restricted to nonresidential use is damaged and the exterior appearance of the unit is thereby affected, the person responsible for the exterior of the unit shall cause the unit to be repaired or rebuilt to the extent necessary to restore its exterior appearance. If that person fails within a reasonable period of time to effect the repairs or rebuilding, the association may purchase the unit at its fair market value to be determined by an independent appraiser selected by the association.

Cross References. Section 5307 is referred to in section 5102 of this title.

§ 5308. Meetings.

(a) Timing and notice.--The bylaws shall require that meetings of the association be held at least once each year and shall provide for special meetings. The bylaws shall specify which of the association's officers, not less than ten nor more than 60 days in advance of any meeting, shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of a meeting may be delivered by electronic means if the unit owner has agreed in writing to accept the notice by electronic means or where the bylaws permit electronic notices. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws; any budget or assessment changes; and, where the declaration or bylaws require approval of unit owners, any proposal to remove a director or officer.

(b) Delivery of notice.--The bylaws must require that notice of virtual meetings of the association be given by:

(1) First class or express mail, postage prepaid, or courier service, charges prepaid, to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. Notice under this paragraph shall be deemed to have been given to a unit owner when deposited in the United States mail or with a courier service for delivery to the unit owner.

(2) Facsimile transmission, e-mail or other electronic communication to the unit owner's facsimile number or address

for e-mail or other electronic communications supplied by the unit owner, provided that the unit owner has agreed in writing to accept the notice by electronic means or where the bylaws expressly permit means of delivering electronic notice. Notice under this paragraph shall be deemed to have been given to the unit owner when sent.

(c) Use of remote technology.--Except as otherwise provided in the bylaws, an individual may participate in a meeting of the executive board or association by means of a conference telephone or other remote electronic technology, including the Internet, which allows each participant in the meeting to hear each other. Participation in a meeting as authorized under this subsection shall be deemed in-person attendance at the meeting.

(d) Pre-election sessions.--The bylaws must require that, in the event that there are more candidates than open positions on the executive board, then, upon request of one or more of the candidates, the association shall hold a special session at least seven days before the election of an executive board member to allow the unit owners to meet each candidate for an executive board position. Each candidate for an executive board position shall have equal time to address the unit owners during a special session under this subsection.

(e) Recorded meeting.--Unless the bylaws provide otherwise, meetings of the association may be recorded by the executive board via audio or video technology, provided that an announcement is made by the presiding officer at the commencement of the meeting that the meeting will be recorded. A recorded meeting under this subsection shall be maintained and available to unit owners for a period of no less than six months after the date of the meeting.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

Cross References. Section 5308 is referred to in sections 5103, 5306, 5310, 5322 of this title.

§ 5309. Quorums.

(a) Association.--

(1) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than 10%.

(2) If the association fails to meet a quorum at two subsequent meetings under this subsection, the association may utilize the provisions under 15 Pa.C.S. § 5756(b) (relating to quorum) to meet quorum requirements, except as otherwise provided in the declaration or bylaws of the association.

(b) Executive board.--Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on the board are present at the beginning of the meeting.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 amended subsec. (a).

Cross References. Section 5309 is referred to in sections 5103, 5222, 5322 of this title.

§ 5310. Voting; proxies.

(a) Unit owner other than natural person.--If the owner of a unit is a corporation, joint venture, partnership or unincorporated association, the natural person who shall be

entitled to cast the vote for that unit shall be the person named in a certificate executed by that entity pursuant to its governing documents. If the owner of a unit is a trust, the trustee or trustees shall be deemed to be the owner for voting purposes. If the ownership of a unit is in more than one person, the natural person who shall be entitled to cast the vote of the unit shall be the person named in a certificate executed by all of the owners of the unit and filed with the secretary of the association or, in the absence of that named person from the meeting or in the event of failure to execute and file such a certificate, the person owning such unit who is present. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with their unanimous agreement unless the declaration expressly provides otherwise. There shall be deemed to be unanimous agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. Such a certificate shall be valid until revoked by a subsequent certificate similarly executed. Except where execution by owners of a unit in the same manner as a deed is required in this subpart and subject to the provisions of the declaration and bylaws, wherever the approval or disapproval of a unit owner is required by this subpart, the declaration or the bylaws, the approval or disapproval shall be made only by the person who would be entitled to cast the vote of the unit at any meeting of the association.

(b) Proxies.--Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given under this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter term.

(c) Voting by lessees.--If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than unit owners of leased units, all of the following apply:

(1) The provisions of subsections (a) and (b) apply to lessees as if they were unit owners.

(2) Unit owners who have leased their units to other persons may not cast votes on those specified matters.

(3) Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners.

Unit owners shall also be given notice, in the manner provided in section 5308 (relating to meetings), of all meetings at which lessees may be entitled to vote.

(d) Units owned by association.--No votes allocated to a unit owned by the association may be cast.

(e) Approved methods of voting.--Methods of voting shall be in accordance with the following:

(1) Except to the extent expressly prohibited in an association's declaration or bylaws, the voting rights of a unit owner may be cast or given in the following ways:

(i) in person or by proxy at a meeting of the association;

(ii) by absentee or electronic ballot in accordance with this subpart; or

(iii) by another method of voting expressly provided in the association's declaration or bylaws.

(2) An absentee or electronic ballot may:

(i) Be counted as a unit owner present and voting for the purpose of establishing a quorum, and otherwise, only for agenda items appearing on the ballot.

(ii) Not be counted even if properly delivered, if the unit owner attends the meeting to vote in person. A vote cast at a meeting by a unit owner supersedes a vote submitted by absentee or electronic ballot previously submitted for that agenda item.

(3) For the purposes of this subsection, the term "electronic ballot" means a ballot cast or given by electronic transmission over the Internet, vote management system or the association's community network, whether by direct connection, intranet, telecopier, electronic mail or other technological means, if the identity of the unit owner submitting the ballot can be confirmed and a receipt of the electronic transmission and ballot can be made available to the unit owner.

(f) Acclamation.--Unless the bylaws of the association provide otherwise, in the event that an election for a position on the executive board is uncontested, the officer or chair presiding at the election meeting may declare the nominee elected by acclamation after determining there are no further nominations.

(Nov. 3, 2022, P.L.1750, No.115, eff. 180 days)

2022 Amendment. Act 115 added subsecs. (e) and (f).

Cross References. Section 5310 is referred to in sections 5103, 5222, 5322 of this title.

§ 5311. Tort and contract liability.

(a) General rule.--

(1) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the planned community which the declarant has the responsibility to maintain may not be brought against the association or against a unit owner other than a declarant.

(2) Except as otherwise provided by paragraph (1):

(i) An action in tort alleging a wrong done by the association or by an agent or employee of the association, or on behalf of the association, must be brought against the association.

(ii) A unit owner shall not be subject to suit or, except as otherwise provided by subsection (b), be otherwise directly or indirectly held accountable for the acts of the association or its agents or employees on behalf of the association.

(3) If the tort or breach of contract occurred during any period of declarant control under section 5303(c) (relating to executive board members and officers), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney fees. If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the declarant under this paragraph unless the association shall have given the declarant all of the following:

(i) Notice of the existence of the claim promptly after the date on which a member of the executive board who is not a designee of the declarant learns of the existence of the claim.

(ii) An opportunity to defend against the claim on behalf of the association but at the declarant's expense.

(4) A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(b) Lien of judgment.--Except as otherwise provided in this subpart, a judgment for money against the association if and when entered of record against the name of the association in the office of the clerk of the court of common pleas of the county where the planned community is located shall also constitute a lien against each unit for a pro rata share of the amount of that judgment, including interest thereon, based on the common expense liability allocated to that unit under section 5208 (relating to allocation of votes and common expense liabilities). No other property of a unit owner is subject to the claims of creditors of the association.

(c) Indexing judgment.--A judgment against the association must be indexed in the name of the planned community.

(d) Applicability of section.--The provisions of this section shall apply to all associations without regard to whether the association is organized as a corporation or as an unincorporated association.

Cross References. Section 5311 is referred to in section 5102 of this title.

§ 5312. Insurance.

(a) Insurance to be carried by association.--Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available, all of the following:

(1) Property insurance on the common facilities and controlled facilities to the extent the controlled facilities can be insured separately from the unit and, if insurance for the unit is not provided by the association under subsection (b) or the declaration, insuring against all common risks of direct physical loss. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(2) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration covering all occurrences commonly insured against for death, bodily injury and property damage, arising out of or in connection with the use, ownership or maintenance of the common elements.

(3) Any property or comprehensive general liability insurance carried by the association may contain a deductible provision.

(b) Units having horizontal boundaries.--In the case of a building containing units having horizontal boundaries described in the declaration, that insurance described in subsection (a)(1), to the extent reasonably available, shall include the

units but need not include improvements and betterments installed by unit owners.

(c) Other insurance carried by association.--If the insurance described in subsections (a) and (b) is not maintained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance. The association may carry any other insurance in such reasonable amounts and with such reasonable deductibles as the executive board may deem appropriate to protect the association or the unit owners.

(d) Policy terms.--Insurance policies carried under subsections (a) and (b) shall provide all of the following:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner or member of the owner's household.

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

(4) If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy is primary insurance not contributing with the other insurance.

(e) Proceeds from property insurance.--Any loss covered by the property policy under subsections (a) (1) and (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the planned community is terminated.

(f) Unit owner insurance.--A unit owner may insure his unit for all losses to his unit, including losses not covered by the insurance maintained by the association due to a deductible provision or otherwise. A residential unit owner shall insure the owner's unit except as insurance is provided by the association in accordance with this section or the declaration. An insurance policy issued to the association shall not prevent a unit owner from obtaining insurance for the owner's own benefit, including, but not limited to, insurance to cover any deductibles or losses not covered by the association's property or comprehensive general liability insurance.

(g) Evidence and cancellation of insurance.--An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurance may not be canceled until 30 days after notice of the proposed cancellation has been mailed to the association, each unit owner and each mortgagee

or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued.

(h) Disposition of insurance proceeds.--

(1) Any portion of the planned community for which insurance is required to be maintained by the association by this section or the declaration and which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

- (i) the planned community is terminated;
- (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or
- (iii) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

Except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves, which have not been identified by the executive board to fund costs of capital expenditures budgeted for the current fiscal year of the association, is a common expense.

(2) Any portion of the planned community for which insurance is required to be maintained by the unit owner by this section or the declaration and which is damaged or destroyed shall be repaired or replaced promptly by the unit owner unless:

- (i) the planned community is terminated;
- (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or
- (iii) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote to not rebuild.

The cost of repair or replacement of these portions in excess of insurance proceeds is the unit owner's expense.

(3) If the entire planned community is not repaired or replaced, the following apply:

(i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community.

(ii) The insurance proceeds attributable to units shall be paid to unit owners except those proceeds attributable to controlled facilities for which insurance is separately maintained by the association under this section or the declaration shall be distributed to all unit owners in proportion to their common expense liability. Proceeds attributable to limited common facilities which are not rebuilt shall be distributed equally to owners of units to which those limited common facilities were assigned.

(iii) The remainder of the proceeds shall be distributed to all the unit owners in proportion to their common expense liability.

(4) If the unit owners vote not to rebuild any unit, that unit's votes in the association and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 5107(a) (relating to eminent domain), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(5) Notwithstanding the provisions of this subsection, section 5220 (relating to termination of planned community) governs the distribution of insurance proceeds if the planned community is terminated.

(i) Nonresidential planned communities.--The provisions of this section may be varied or waived in the case of a planned community all of whose units are restricted to nonresidential use.

(j) Recovery of deductibles.--If any insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 5314(c) (relating to assessments for common expenses).
(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsecs. (a), (c), (f) and (h) and added subsec. (j).

Cross References. Section 5312 is referred to in sections 5221, 5307, 5402 of this title.

§ 5313. Surplus funds.

Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which those limited common expenses pertain in excess of the amount required for actual limited common expenses and reserves for future limited common expenses shall be credited to each unit assessed for a share of those limited common expenses in proportion to the share of those limited common expenses so assessed. These credits shall be applied, unless the declaration provides otherwise, to the next monthly assessments of limited common expenses against that unit under the current fiscal year's budget and thereafter until exhausted. Any amounts accumulated from assessments for general common expenses and income from the operation of the common elements, other than limited common elements with regard to which limited common expenses are assessed, in excess of the amount required for actual general common expenses and reserves for future general common expenses shall be credited to each unit in accordance with that unit's interests in common elements. These credits shall be applied, unless the declaration provides otherwise, to the next monthly assessments of general common expenses against the unit under the current fiscal year's budget and thereafter until exhausted.

Cross References. Section 5313 is referred to in sections 5315, 5407 of this title.

§ 5314. Assessments for common expenses.

(a) General rule.--Until the association makes a common expense assessment, the declarant shall pay all the expenses of the planned community. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association. The budgets of the association shall segregate limited common expenses from general common expenses if and to the extent appropriate.

(b) Allocation and interest.--Except for assessments under subsection (c), all common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit in the case of general common expenses and in accordance with subsection (c) in the case of special allocation of expenses. Any past due assessment or installment

thereof shall bear interest at the rate established by the association at not more than 15% per year.

(c) Special allocations of expenses.--Except as provided by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred.

(2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.

(3) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities that are separately metered to each unit shall be assessed in proportion to usage.

(4) If a common expense is caused by the negligence or misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(d) Reallocation.--If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

Cross References. Section 5314 is referred to in sections 5102, 5103, 5312, 5315 of this title.

§ 5315. Lien for assessments.

(a) General rule.--The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in a like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage on the unit, except the mortgage for which the sale is being held, if the mortgage is prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. § 8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for planned community assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged under section 5302(a)(10), (11) and (12) (relating to power of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due to the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of lien.--

(1) General rule.--A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recording of the declaration.

(ii) (A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before due date of the assessment if the assessment is not payable in installments or the due date of the unpaid installment if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by any such mortgage or deed of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Limited nondivestiture.--The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 5314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 5314(b) other than the six months' assessment referred to in subparagraph (i), in a full amount of the unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent that the proceeds of the sale are sufficient to pay some or all of these additional assessments after satisfaction in full of the costs of the judicial sale and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), the assessments shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) Monetary exemption.--The lien is not subject to the provisions of 42 Pa.C.S. § 8123 (relating to general monetary exemption).

(c) Liens having equal priority.--If the association and one or more associations, condominium associations or cooperative associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Notice and perfection of lien.--Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(e) Limitation of actions.--A lien for unpaid assessments is extinguished unless proceedings to enforce the lien or actions or suits to recover sums for which subsection (a) establishes a lien are instituted within four years after the assessments become payable.

(f) Other remedies preserved.--Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(g) Costs and attorney fees.--A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney fees for the prevailing party.

(h) Statement of unpaid assessments.--The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit under section 5313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

(i) Application of payments.--Unless the declaration provides otherwise, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment. (Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Apr. 20, 2016, P.L.156, No.21, eff. 60 days)

2016 Amendment. Act 21 amended subsec. (e).

2004 Amendment. Act 189 amended subsec. (b)(1) and (2)(i) and added subsec. (i).

Cross References. Section 5315 is referred to in section 5102 of this title.

§ 5316. Association records.

(a) Financial records.--The association shall keep financial records sufficiently detailed to enable the association to comply with section 5407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and authorized agents.

(b) Annual financial statements.--Within 180 days after the close of its fiscal year, the association in any planned community having more than 12 units or subject to any rights under section 5215 (relating to subdivision or conversion of units) or 5211 (relating to conversion and expansion of flexible planned communities) shall prepare annual financial statements consisting of at least a balance sheet and a statement of revenues and expenses for the association. The cost of preparing the financial statements shall be a common expense. Each unit owner shall be entitled to receive from the association, within 30 days after submitting a written request to the association, a copy of the annual financial statements and, if such financial statements are audited, reviewed or compiled by an independent certified public accountant or independent public accountant, a copy of the independent accountant's report on the financial statements. The association may charge a fee not to exceed the cost of producing copies of records other than the financial statement.

(c) Filing of complaints.--If an association subject to subsection (a) fails to provide a copy of the annual financial statements and, if applicable, the report of an independent accountant as required under subsection (b) to the requesting unit owner within 30 days of the unit owner's written request or if the financial records of the association which substantiate an association's financial statements are not made reasonably available by any association for examination by any unit owner and authorized agents, the unit owner may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General.

Cross References. Section 5316 is referred to in sections 5103, 5102 of this title.

§ 5317. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person without

actual knowledge that the association is exceeding or improperly exercising its powers is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

§ 5318. Conveyance or encumbrance of common facilities.

(a) General rule.--Portions of the common facilities may be conveyed or subjected to a security interest by the association if the persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies agree to that action; but the owners of units to which any limited common facility is allocated must agree in order to convey that limited common facility or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) Required agreement.--An agreement to convey common facilities or subject them to a security interest shall be evidenced by the execution of an agreement or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications shall be recorded in every county in which a portion of the planned community is situated and is effective only upon recording.

(c) Association powers.--The association on behalf of the unit owners may contract to convey common facilities or subject them to a security interest, but the contract is not enforceable against the association until approved under subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Other conveyances or encumbrances void.--Any purported conveyance, encumbrance, judicial sale, tax sale or other voluntary or involuntary transfer of common facilities, unless made pursuant to this section, is void.

(e) Right of access and support.--A conveyance or encumbrance of common facilities pursuant to this section does not deprive any unit of its right of access and support.

(f) Preexisting encumbrances.--Unless the declaration otherwise provides, a conveyance or encumbrance of common facilities pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(g) Limitation.--Common facilities which may be conveyed or encumbered pursuant to this section shall not include any land, buildings or other facilities:

- (1) containing or comprising one or more units; or
- (2) necessary for the use or operation of one or more units.

(h) Subject to declaration.--An interest in common facilities that is subject to the declaration prior to conveyance or encumbrance shall remain subject to the provisions of the declaration following the conveyance or encumbrance, unless the deed or agreement to convey the common facilities or subject them to a security interest specifically provides otherwise.

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (d) and added subsec. (h).

Cross References. Section 5318 is referred to in sections 5302, 5319 of this title.

§ 5319. Other liens affecting planned community.

(a) General rule.--Except as provided in subsection (b), a judgment for money against the association, if and when the judgment has been perfected as a lien on real property, is not a lien on the common facilities but is a lien in favor of the judgment lienholder against all of the units in the planned community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Security interest in common facilities.--If the association has granted a security interest in the common facilities to a creditor of the association under section 5318 (relating to conveyance or encumbrance of common facilities), the holder of that security interest shall exercise its right against the common facilities before its judgment lien on any unit may be enforced.

(c) Release upon payment of unit owner's share.--Whether perfected before or after the creation of the planned community, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the planned community, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit; and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) Indexing of judgments.--A judgment against the association shall be indexed in the name of the planned community and the association and, when so indexed, is notice of the lien against the units.

Cross References. Section 5319 is referred to in section 5102 of this title.

§ 5320. Declarant delivery of items to association.

Except as set forth in paragraph (9), not later than 60 days after the required termination of the period of declarant control under section 5303(c) (relating to executive board members and officers) or the declarant's earlier voluntary termination of control, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including, without limitation, all of the following items, if applicable, as to each planned community or other owners' association operated by the association:

(1) The original or a certified copy or a photocopy of the recorded declaration and all amendments thereto. If a photocopy is delivered, the photocopy shall reflect the recording information and shall be accompanied by an affidavit executed by the declarant certifying the photocopy to be a true, correct and complete copy of the actual recorded declaration and all amendments thereto.

(2) The association articles of incorporation, if incorporated, with evidence of filing with the Department of State.

(3) A copy of the bylaws.

(4) A complete set of all executive board minutes and resolutions and all other books and records of the association.

(5) A complete copy of all rules and regulations that may have been adopted.

(6) Copies of all Federal, State and local tax returns filed by or on behalf of the association and copies of any tax-exempt elections made by or on behalf of the association.

(7) Copies of all past and current budgets of the association.

(8) Resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish or has relinquished control of the association.

(9) Not later than 90 days after the required termination of the period of declarant control under section 5303(c) or the declarant's earlier voluntary termination of control, a complete audit of the finances of the association for the time period between the last audit of the association's financial books and records and the date of termination of the period of declarant control, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, the costs of which audit are to be borne equally by the declarant and the association. If the planned community consists of not more than 12 units, a warranty from the declarant to the association that the books and records of the association completely and accurately reflect all activities of the association from its inception through the date of termination of the period of declarant control may be substituted for the audit referred to in this paragraph.

(10) All association funds or control thereof.

(11) All tangible personal property and inventories thereof:

(i) that may have been represented or should have been represented by the declarant in any public offering statement, sales materials or other writings to be part of the common elements; or

(ii) that are otherwise property of the association.

(12) A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation or remodeling of any buildings and improvements within the planned community and in the construction and installation of any mechanical components and equipment serving the buildings and improvements and property if and to the extent the construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the declarant and substantially completed during the period commencing three years prior to the date of the first public offering statement regarding the planned community. If no public offering statement is required for any unit in the planned community, the three-year period shall commence on the date of the recording of the planned community declaration or amendment thereto with respect to such improvements and shall end on the date by which compliance with this section is required. If such construction, rehabilitation, renovation, remodeling or installation was substantially completed within the three-year period but not

by or on behalf of the declarant, the obligation of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant and to use reasonable efforts to obtain and provide any such plans, drawings or specifications not within the possession of the declarant. If such construction, rehabilitation, renovation, remodeling or installation was substantially completed more than three years prior to the commencement of the three-year period described in this paragraph, the obligations of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant. To the extent previously made available to the declarant, the declarant in all cases shall deliver to the association owners operating, care and maintenance manuals and other information regarding mechanical components and equipment serving any buildings and improvements in the planned community. A declarant's delivery of plans, drawings or specifications under this paragraph shall not constitute a representation or warranty of the accuracy or completeness of the plans, drawings or specifications and shall not expand or otherwise affect the declarant's warranties created under section 5411 (relating to warranty against structural defects).

(13) All insurance policies insuring the association then in force.

(14) Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the planned community, if and to the extent available.

(15) Any other permits issued by governmental bodies applicable to the planned community property which are then currently in force, notices of violations of governmental requirements then outstanding and incurred and all reports of investigations for the presence of hazardous conditions as defined in section 5402(a)(27) (relating to public offering statement; general provisions).

(16) Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the planned community property or have supplied equipment or services to the planned community property.

(17) A roster of unit owners and mortgagees and their respective addresses and telephone numbers, if known, as shown on the declarant's records.

(18) Employment contracts in which the association is or is to be one of the contracting parties.

(19) Service and other contracts and leases in which the association is or is to be one of the contracting parties and service contracts in which the association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.

Cross References. Section 5320 is referred to in section 5222 of this title.

§ 5321. Alternative dispute resolution in planned communities.

(a) Applicability.--

(1) A planned community established after the effective date of this section shall adopt bylaws in compliance with this section.

(2) A planned community established on or before the effective date of this section may adopt bylaws in compliance with the provisions of this section.

(b) Procedures.--

(1) The bylaws shall establish procedures for an alternative dispute resolution for disputes between:

(i) two or more unit owners; or

(ii) a unit owner and the association.

(2) Alternative dispute resolution shall be limited to disputes where all parties agree to alternative dispute resolution.

(3) Costs and fees associated with alternative dispute resolution, excluding attorney fees, shall be assessed equally against all parties to a dispute.

(c) Construction.--Nothing in this section shall be construed to affect or impair the right of a unit owner, declarant or association to pursue a private cause of action or seek other relief.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

2018 Amendment. Act 17 added section 5321.

Cross References. Section 5321 is referred to in section 5322 of this title.

§ 5322. Complaints filed with Bureau of Consumer Protection.

(a) General rule.--A unit owner in good standing may file a complaint with the Bureau of Consumer Protection in the Office of the Attorney General in the event of a violation by the declarant or the association of sections 5308 (relating to meetings), 5309 (relating to quorums) and 5310 (relating to voting; proxies).

(b) Condition.--If an alternative dispute resolution procedure is available to the unit owner under the association's declaration, bylaws, rules or regulations, a complaint may not be filed by a unit owner with the Bureau of Consumer Protection until the earlier of:

(1) the unit owner exhausting the alternative dispute resolution procedure without a resolution between the unit owner and the association; or

(2) at least 100 days have passed since the unit owner commenced the alternative dispute resolution procedure and the unit owner and association having not reached a resolution.

(c) Immediate filing.--A complaint may be filed by a unit owner with the Bureau of Consumer Protection immediately if:

(1) an alternative dispute resolution procedure is not available to the unit owner under the association's declaration, bylaws, rules or regulations; or

(2) the association refuses alternative dispute resolution under section 5321(b)(2) (relating to alternative dispute resolution in planned communities).

(d) Construction.--Nothing in this section shall be construed to affect or impair the right of a unit owner, declarant or association to pursue a private cause of action or seek other relief, as authorized by law.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

2018 Amendment. Act 17 added section 5322.

Sec.

- 5401. Applicability; waiver.
- 5402. Public offering statement; general provisions.
- 5403. Public offering statement; time-share estates.
- 5404. Public offering statement; planned communities containing conversion buildings.
- 5405. Public offering statement; planned community securities.
- 5406. Purchaser's right to cancel.
- 5407. Resales of units.
- 5408. Escrow of deposits.
- 5409. Release of liens.
- 5410. Planned communities containing conversion buildings.
- 5411. Warranty against structural defects.
- 5412. Effect of violations on rights of action.
- 5413. Labeling of promotional material.
- 5414. Declarant's obligation to complete and restore.

Enactment. Chapter 54 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

§ 5401. Applicability; waiver.

(a) General rule.--This chapter applies to all units subject to this subpart, except as provided in subsection (b) and section 5411 (relating to warranty against structural defects) or as modified or waived by agreement of the purchaser of any unit which is intended for nonresidential use at the time of sale of such unit by the declarant or by agreement of purchasers of units in a planned community who are or intend to be in the business of buying and selling planned community units, provided that:

(1) a purchaser of a unit intended for residential use at the time of sale by the declarant may not modify or waive the provisions of section 5411 with regard to such unit and the common elements;

(2) with regard to any limited common element appurtenant only to nonresidential units, the unit owners of all such units have agreed to such modification or waiver and, with regard to any common elements other than limited common elements in a planned community in which all units are restricted to nonresidential use, all unit owners have agreed to such modification or waiver; and

(3) no modification or waiver shall prevent any unit owner from indirectly benefiting from any provision in this chapter by reason of such unit owner being a unit owner in the planned community and a member of the association.

(b) Public offering statements.--A public offering statement need not be prepared or delivered in the case of:

(1) a gratuitous transfer of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition of a unit situated wholly outside this Commonwealth pursuant to a contract executed wholly outside this Commonwealth; or

(6) a transfer to which section 5407 (relating to resales of units) applies.

(c) Resale certificates.--A resale certificate as described in section 5407 need not be prepared or delivered in the cases described in subsection (b)(1) through (5).

(d) Unified public offering statement.--If a unit is part of two or more planned communities or is part of a planned

community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this Commonwealth, a single public offering statement conforming to the requirements of sections 5402 (relating to public offering statement; general provisions), 5403 (relating to public offering statement; time-share estates) and 5404 (relating to public offering statement; planned communities containing conversion buildings), as those requirements relate to any real estate regimes in which the unit is located and to any other requirements imposed under the laws of this Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

Cross References. Section 5401 is referred to in sections 5102, 5406 of this title.

§ 5402. Public offering statement; general provisions.

(a) General rule.--Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the planned community.

(2) A general description of the planned community, including, without limitation, the types, number and declarant's schedule of commencement and completion of construction of all buildings, units and amenities.

(3) A narrative description of the type and character of units offered, including a statement of the degree of completion to be provided or undertaken by the declarant of such units and the common elements necessary for use and enjoyment of such units upon the conveyance by the declarant of units offered.

(4) The total number of additional units that may be included in the planned community and the proportion of units the declarant intends to rent or market in blocks of units to investors.

(5) A brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 5206(1) (relating to contents of declaration for flexible planned communities) and the expected effect that withdrawal would have on the remaining portion of the planned community.

(6) Copies and a brief narrative description of the significant features of the declaration, other than the plats and plans, and the bylaws, rules and regulations, agreement of sale, copies of any contracts and leases to be signed by the purchasers prior to or at closing and a brief narrative description of any other contracts or leases or agreements of a material nature to the planned community that will or may be subject to cancellation by the association under section 5305 (relating to termination of contracts and leases of declarant).

(7) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser and thereafter the current budget of the association, a statement of who prepared the budget and a statement of the budget's material assumptions, including those concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.

(ii) A statement containing a description of any provisions made in the budget for reserves for anticipated material capital expenditures or any other reserves or, if no provision is made for reserves, a statement to that effect.

(iii) The projected common expense assessment by category of expenditures for the association.

(iv) The projected monthly common expense assessment for each type of unit.

(8) Any of the following:

(i) Services not reflected in the budget that the declarant provides or expenses that the declarant pays and that the declarant expects may become at any subsequent time a common expense of the association.

(ii) Personal property not owned by the association but provided by the declarant and being used or to be used in the operation and enjoyment of the common elements which is or will be required in connection with the operation and enjoyment of the common elements after such personal property is no longer provided by the declarant and the projected common expense assessment for the association and for each type of unit attributable to each of those services or expenses and purchase or rental of such personal property.

(9) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(10) A description of any liens, defects or encumbrances on or affecting the title to the planned community.

(11) A description of any financing for purchasers offered or arranged by the declarant.

(12) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(13) A statement in at least ten-point boldface type, appearing on the first page of the public offering statement, as follows:

(i) That, within seven days after receipt of a public offering statement or an amendment to the public offering statement that materially and adversely affects the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) That, if a declarant fails to provide a public offering statement and any amendments to a purchaser before conveying a unit, the purchaser may recover from the declarant damages as provided in section 5406(c) (relating to purchaser's right to cancel).

(iii) A description of damages under section 5406(c).

(iv) That, if a purchaser receives the public offering statement more than seven days before signing a contract, the purchaser cannot cancel the contract unless there is an amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(14) A statement of any judgments against the association, the status of any pending suits to which the

association is a party and the status of any pending suits material to the planned community of which a declarant has actual knowledge.

(15) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account in accordance with the provisions of section 5408 (relating to escrow of deposits) and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 5406.

(16) Any restraints on alienation of any portion of the planned community.

(17) A description of all insurance coverage provided or intended to be provided, if such insurance is not then in effect, for the benefit of unit owners, including the types and extent of coverage and the extent to which such coverage includes or excludes improvements or betterments made to units, in accordance with section 5312 (relating to insurance).

(18) Any fees or charges to be paid by unit owners, currently or in the future, for the use of the common elements, limited common elements and other facilities related to the planned community.

(19) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" under section 5414 (relating to declarant's obligation to complete and restore).

(20) All unusual and material circumstances, features and characteristics of the planned community and the units.

(21) In the case of a leasehold planned community, at least the following information:

(i) The name and address of each lessor and his assignee, if any.

(ii) Any relationship between the declarant and any lessor or assignee.

(iii) A description of the leased property.

(iv) The rent and any provision in the lease for increases in the rent and any other charges or payments required to be paid by the lessee under the lease.

(v) Whether the lessee has any right to terminate the lease.

(vi) The information contained in the declaration as required by section 5207(a) (relating to leasehold planned communities).

(vii) The following notice in boldface type:

"Purchasers should be aware that this is a leasehold planned community, and the purchaser's interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability."

(22) A statement containing a declaration as to the present condition of all structural components and major utility installations in the subject property, including the dates of construction, installation and major repairs, if known or ascertainable, and the expected useful life of each item, together with the estimated cost in current dollars of replacing each of the same.

(23) A description of how votes are allocated among the units and a statement as to whether cumulative or class voting is permitted and, if so, under what circumstances. The statement shall also explain the operation of cumulative or class voting.

(24) A description of any circumstances under which the association is to become a master association or part of a master association.

(25) A statement of all governmental approvals and permits required for the use and occupancy of the planned community, indicating the name and expiration date of each such approval or permit that has been obtained and, as to any approvals or permits that have not been obtained, a statement indicating when each such approval or permit is expected to be obtained and the person responsible for the expense of obtaining each such approval or permit.

(26) A statement as to whether there are any outstanding and uncured notices of violations of governmental requirements and, if there are any such notices of violations, a description of the alleged violation and a statement indicating when each violation is expected to be cured and the person who shall bear the expense of curing such violation.

(27) A statement as to whether the declarant has knowledge of any one or more of the following:

(i) Hazardous conditions, including contamination, affecting the planned community site by hazardous substances, hazardous wastes or the like or the existence of underground storage tanks for petroleum products or other hazardous substances.

(ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the planned community site.

(iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority, in order to correct any hazardous conditions and any action taken pursuant to those recommendations. If the declarant has no knowledge of such matters, the declarant shall make a statement to that effect. The declarant shall also set forth the address and phone number of the regional offices of the Department of Environmental Resources and the United States Environmental Protection Agency where information concerning environmental conditions affecting the planned community site may be obtained.

(28) A summary and description of all the provisions of the declaration for the planned community to comply with section 5205(16) (relating to contents of declaration; all planned communities).

(29) A statement identifying all facilities and amenities in the planned community which the declarant shall be obligated to complete and with respect thereto:

(i) The time within which each identified facility or amenity shall be completed.

(ii) Whether there is a source of funding to complete the facilities and amenities or any security for the completion, and a description of any such funding source and security.

(iii) Who will own the facilities and amenities to be completed by the declarant.

(iv) The responsibilities of unit owners and the association, respectively, for the maintenance, repair, improvement, administration and regulation of the facilities and amenities.

(b) Exceptions.--If a planned community composed of not more than 12 units is not a flexible planned community and no power is received to a declarant to make the planned community

part of a larger planned community, a group of planned communities or other real estate, a public offering statement may, but need not, include the information otherwise required by subsection (a)(4) and (5) and the narrative descriptions of documents required by subsection (a)(6).

(c) Amendment for material change in information.--A declarant shall promptly amend the public offering statement to report any material change in the information required by this section.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

2020 Amendment. Act 11 amended subsec. (a)(18).

2004 Amendment. Act 189 amended subsec. (a)(13)(i) and (iv).

Cross References. Section 5402 is referred to in sections 5102, 5320, 5401, 5403, 5404, 5407, 5410, 5414 of this title.

§ 5403. Public offering statement; time-share estates.

If the declarant provides that ownership or occupancy of any units are or may be owned in time-shares, the public offering statement shall contain or disclose in addition to the information required by section 5402 (relating to public offering statement; general provisions):

(1) The total number of units in which time-share estates may be created.

(2) The total number of time-share estates that may be created in the planned community.

(3) The projected common expense assessment for each time-share estate and whether those assessments may vary seasonally.

(4) A statement of any services, not reflected in the budget, which the declarant provides or expenses which he pays and which the declarant expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for each time-share estate.

(5) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit.

(6) The extent to which a suit for partition may be maintained against a unit owned in time-share estates.

(7) The extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

(8) A statement in at least ten-point boldface type, appearing on the first page of the public offering statement, that:

(i) Within seven days after receipt of a public offering statement, a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, the purchaser may recover from the declarant damages as provided in section 5406(c) (relating to purchaser's right to cancel) and a description of such damages.

(iii) If a purchaser receives the public offering statement more than seven days before signing a contract, the purchaser cannot cancel the contract.

Cross References. Section 5403 is referred to in sections 5102, 5401 of this title.

§ 5404. Public offering statement; planned communities containing conversion buildings.

(a) General rule.--The public offering statement of a planned community containing a conversion building must contain, in addition to the information required by section 5402 (relating to public offering statement; general provisions):

(1) A statement by the declarant, based on a report prepared by an independent registered architect or professional engineer:

(i) Describing the age and present condition and, if known or reasonably ascertainable, the dates of construction, installation and major repairs of all structural components and mechanical and electrical installations, including, but not limited to, roofs, plumbing, heating, air conditioning, elevators, storm water systems and sewage treatment systems material to the use and enjoyment of the planned community.

(ii) Describing the results of the inspection of the units and common elements required pursuant to section 5411(c) (relating to warranty against structural defects) for visible conditions that adversely affect the health or safety of residential occupants. The statement should also state the extent to which the report by the architect or professional engineer is based upon a visual inspection of the units as well as the common elements.

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1), including the current replacement costs of such item.

(3) A list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations.

(4) A statement by the declarant, based on a report prepared by an independent licensed exterminating company, describing the presence at the planned community of any visible pest conditions dangerous to health and safety, such as the presence of insects and rodents dangerous to health or safety, and outlining actions taken or to be taken to eliminate the existence of pest conditions dangerous to health or safety.

(b) Applicability of section.--This section applies only to units that may be occupied for residential use.

Cross References. Section 5404 is referred to in sections 5102, 5401, 5411 of this title.

§ 5405. Public offering statement; planned community securities.

If an interest in a planned community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this subpart if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a planned community is not in and of itself a security under the provisions of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972. The offer and sale of planned community units in accordance with the requirements of this chapter shall not also be subject to the registration requirements of section 201 or 301 of the Pennsylvania Securities Act of 1972 or the

promotional real estate sales requirements of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

Cross References. Section 5405 is referred to in section 5102 of this title.

§ 5406. Purchaser's right to cancel.

(a) **General rule.**--In cases where delivery of a public offering statement is required under section 5401 (relating to applicability; waiver), a declarant shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto not later than the date the purchaser executes the contract of sale for such unit or, if no contract of sale is executed, not later than seven days before conveyance of such unit. Unless a purchaser is given the public offering statement, including all the currently effective amendments thereof, within the time period referred to in the preceding sentence, the purchaser, before conveyance, may cancel the contract within seven days, after first receiving the public offering statement and all currently effective amendments. If a public offering statement is amended after the public offering statement has been received by a purchaser of a unit, the amendment shall be provided to the purchaser promptly after it becomes effective. If the amendment materially and adversely affects the rights or obligations or both of the purchaser, then the purchaser, before conveyance, may cancel the contract of sale within seven days after receiving the amendment.

(b) **Method and effect of cancellation.**--If a purchaser elects to cancel a contract pursuant to subsection (a), the purchaser may do so by hand-delivering notice thereof to the declarant or by mailing notice thereof by prepaid United States mail to the declarant or to the declarant's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(c) **Penalty for noncompliance by declarant.**--If a declarant fails to provide a purchaser to whom a unit is conveyed with a public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any other relief, is entitled to receive from the declarant an amount equal to 5% of the sales price of the unit up to a maximum of \$2,000 or actual damages, whichever is the greater amount. A minor omission or error in the public offering statement or an amendment thereto that is not willful shall entitle the purchaser to recover only actual damages, if any.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days)

1998 Amendment. Act 37 amended subsec. (a).

Cross References. Section 5406 is referred to in sections 5402, 5403 of this title.

§ 5407. Resales of units.

(a) **Information supplied by unit owner.**--In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit or otherwise before conveyance a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit.

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and any surplus fund credits to be applied with regard to the unit pursuant to section 5313 (relating to surplus funds).

(3) A statement of any other fees payable by unit owners.

(4) A statement of any capital expenditures proposed by the association for the current and two next succeeding fiscal years.

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified project.

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.

(7) The current operating budget of the association.

(8) A statement of any judgments against the association and the status of any pending suits to which the association is a party.

(9) A statement describing any insurance coverage provided for the benefit of unit owners.

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements or knowledge of the existence of any hazardous conditions pursuant to section 5402(a)(27) (relating to public offering statement; general provisions) with respect to the unit, the limited common elements assigned to the unit or any other portion of the planned community.

(12) A statement of the remaining term of any leasehold estate affecting the planned community and the provisions governing any extension or renewal thereof.

(13) A statement as to whether the declaration provides for cumulative voting or class voting.

(14) A statement as to whether an agreement to terminate the planned community has been submitted to the unit owners for approval and remains outstanding.

(15) A statement of whether the planned community is a master association or is part of a master association or could become a master association or part of a master association.

(16) A statement describing which units, if any, may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned community.

(17) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the planned community and, if so, the information describing such right which was supplied by the declaration pursuant to section 5205(13) (relating to contents of declaration; all planned communities), if any.

(b) Information supplied by association.--The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information and copies of documents necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) Liability for error or inaction by association.--A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) Purchase contract voidable.--The purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsec. (c) and added subsec. (d).

Cross References. Section 5407 is referred to in sections 5102, 5302, 5316, 5401 of this title.

§ 5408. Escrow of deposits.

(a) General rule.--Any deposit (which shall not include any installment payment under an installment sales contract nor a payment specifically stated in a sales contract to be in payment of or on account of extras, changes or custom work) made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this Commonwealth by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution or a licensed title insurance company in an account or in the form of a certificate of deposit designated solely for that purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:

- (1) delivered to the declarant at closing or, in the case of the sale of a unit pursuant to an installment sales contract, upon the expiration of 30 days from the date of occupancy of the unit;
- (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or
- (3) refunded to the purchaser.

(b) Use of bond or letter of credit.--In lieu of escrowing deposits in accordance with subsection (a), a declarant may:

- (1) obtain and maintain a corporate surety bond issued by a surety authorized to do business in this Commonwealth, and in which the declarant has no direct or indirect ownership interest, in the form and in the amount set forth in subsection (d); or
- (2) obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by a governmental agency or instrumentality, and in which the declarant has no direct or indirect ownership interest, in the form and in the amount set forth in subsection (d).

(c) Timing.--A corporate surety bond or irrevocable letter of credit obtained pursuant to subsection (b) shall be maintained until all deposits received by the declarant have been deposited in escrow or properly credited or refunded to a purchaser under the conditions enumerated in subsection (a).

(d) Form and amount of bond or letter of credit.--

- (1) A bond obtained pursuant to subsection (b)(1) shall be payable to the Commonwealth for use and benefit of every person protected by the provisions of this section. The declarant shall deposit the bond with the Attorney General. The bond shall be a blanket bond in the minimum amount of \$1,000,000, in a form acceptable to the Attorney General.

- (2) A letter of credit obtained pursuant to subsection (b)(2) shall be payable to the Commonwealth for the use and

benefit of every person protected by the provisions of this section. The declarant shall deposit the letter of credit with the Attorney General. The letter of credit shall be a blanket letter of credit, in a form acceptable to the Attorney General, in the minimum amount of \$1,000,000.

(e) Adjustment of bond amount.--The Attorney General may annually adjust the amount of the required bond, based upon the cumulative change in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area, using 2004 as the base year. An adjustment shall be effective 60 days after publication in the Pennsylvania Bulletin of notice of the adjustment.
(Jan. 6, 2006, P.L.13, No.3, eff. 60 days)

Cross References. Section 5408 is referred to in sections 5102, 5402 of this title.

§ 5409. Release of liens.

(a) General rule.--Before conveying a unit, other than by deed in lieu of foreclosure, to a purchaser other than a declarant, a declarant shall record or furnish to the purchaser releases of all liens affecting that unit and its rights with respect to any common elements which the purchaser does not expressly agree to take subject to or assume or shall provide a surety bond or substitute collateral for or insurance against the liens adequate in nature and amount. This subsection does not apply to any convertible or withdrawable real estate in which no unit has been conveyed.

(b) Other liens.--Before conveying real estate to the association, the declarant shall have the real estate released from:

(1) All liens the foreclosure of which would deprive unit owners of any right of access to or easements of support of their units.

(2) All other liens, including, without limitation, real estate taxes, on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (b)(2).

Cross References. Section 5409 is referred to in section 5102 of this title.

§ 5410. Planned communities containing conversion buildings.

(a) Notice of conversion.--The declarant of every planned community containing one or more conversion buildings shall give each of the residential tenants and residential subtenants, if any, lawfully in possession of a unit or units in a conversion building or buildings a conversion notice no later than one year before the declarant requires the residential tenant and residential subtenant to vacate. The conversion notice must set forth generally the rights of residential tenants and residential subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States certified or registered mail, return receipt requested, to the residential tenant and residential subtenant at the address of the unit and not more than one other mailing address provided by the residential tenant. Every notice shall be accompanied by a public offering statement concerning the proposed sale of planned community units within such building or buildings. Except as provided in subsection (f), no residential tenant or residential subtenant in a conversion building may be required by the declarant to vacate the unit earlier than one year after

the conversion notice date except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy, including those terms that apply to a period occurring in whole or in part after the conversion notice date, may not be altered but may be enforced during that period. Failure of a declarant to give notice to a residential tenant or residential subtenant entitled to such notice under this subsection is a defense to an action for possession against such residential tenant or residential subtenant.

(b) Offer to tenant to purchase unit.--For six months after the conversion notice date, the declarant shall offer to convey each unit or proposed unit occupied for residential use in a conversion building to the tenant who leases that unit. If the tenant fails to purchase his unit during that six-month period, the declarant may not offer to dispose of an interest in that unit during the following six months at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection shall not apply to any rental unit:

(1) which, immediately prior to the conversion notice date, was restricted or devoted exclusively to nonresidential use; or

(2) the boundaries of which, after the creation of the planned community, will not substantially conform to the boundaries of such unit on the conversion notice date.

(c) Effect of wrongful conveyance.--If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b) but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

(d) Notice to vacate.--If a conversion notice specifies a date by which a unit or proposed unit must be vacated, the conversion notice also constitutes a notice of termination of the tenant's lease, subject to revocation in accordance with subsection (i), and a notice to quit specified by section 501 of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951.

(e) Improper lease termination prohibited.--

(1) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(2) Nothing in this section or in any lease shall prohibit a residential tenant, after receiving notice under subsection (a), from terminating any lease without any liability for such termination provided such tenant gives the building owner 90 days' written notice of the intent to terminate the lease.

(3) The declarant or owner of any proposed conversion planned community shall not engage in any activity of any nature which would coerce the tenant into terminating any lease, including, but not limited to, harassing tenants or withholding normal services or repairs.

(f) Units leased to senior citizens and disabled persons.--

(1) For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, on the conversion notice date, lawfully occupies a unit in a conversion building as a principal residence and is 62 years of age or older or is disabled and has occupied the unit for at least two years. For purposes of this subsection, a person

shall be deemed to be disabled if on the conversion notice date he is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impediment, including, but not limited to, blindness.

(2) Within 60 days after the conversion notice date, any tenant or subtenant in possession of a unit who believes that he is an eligible tenant or subtenant shall so notify the declarant and shall provide the declarant with proof of his eligibility. Any eligible tenant or subtenant who has established his eligibility as aforesaid shall be entitled to remain in possession of his unit for two years following the conversion notice date, notwithstanding any prior termination date in his lease, except by reason of nonpayment of rent, waste or conduct that disturbs other occupants' peaceful enjoyment of the planned community, and the terms of the tenancy, including terms that apply to a time period after the conversion notice date, may not be altered but may be enforced during the time period between the original lease termination date and the expiration of this two-year period except as is otherwise provided in paragraph (3).

(3) The monthly rental payable by the tenant during the time period commencing upon the later to occur of the original lease termination date or the first anniversary of the conversion notice date and ending upon the expiration of the two-year period described in paragraph (2) shall be the same monthly rental as was payable for the month immediately preceding the original lease termination date, except that, at the landlord's option, such monthly rental may be increased by the lesser of 5% of such monthly rental or the same percentage increase as the percentage increase, if any, in the Consumer Price Index as calculated and published by the United States Department of Labor for the six-month time period commencing on the first day of the first full calendar month after the conversion notice date.

(4) Failure of a declarant to comply with the provisions of this subsection is a defense to an action for possession.

(g) Tenant meetings; open to the public.--With respect to any conversion building containing one or more units then occupied for residential use, at least 30 days before the conversion notice date, the declarant shall hold a tenant meeting open to the public in the municipality where the proposed conversion building is located at a place and time convenient to the persons who may be directly affected by the conversion. At least ten days' notice of the time and place of the meeting shall be given to residential tenants and subtenants in lawful possession of their units, in the same manner as is required for the giving of the conversion notice, and to the general public by a notice in a newspaper of general circulation in the municipality in which the planned community is located, except that no notice to the general public need be given with respect to conversion buildings as to which the provisions of section 5402(b) (relating to public offering statement; general provisions) are applicable. At such meeting, representatives of the declarant shall briefly describe the following and may, but shall not be required to, discuss other matters:

(1) The rights and obligations of tenants and subtenants under this section.

(2) Improvements, if any, then planned to be made to the planned community by the declarant.

(3) The anticipated approximate range of initial unit sales prices. Specific unit sales prices need not, however, be provided.

(4) The anticipated approximate range of estimated monthly common expenses for various types of units; however, specific per unit estimates need not be provided.

(h) Community development grants.--If Federal funds under the Community Economic Development Act of 1981 (Public Law 97-35, 42 U.S.C. § 9801 et seq.) have been used to finance the rehabilitation of multifamily rental housing, with the intent that such housing subsequent to the rehabilitation is to be used for residential rental purposes, such housing shall not be converted to a planned community for a period of ten years from the date the rehabilitation is completed.

(i) Revocation.--A declarant may subsequently revoke a conversion notice if the declarant has expressly reserved the right of revocation in the conversion notice and if the notice of revocation:

(1) Is given prior to the conveyance of any unit in the planned community occurring after the conversion notice date other than a unit or units conveyed to a successor declarant or as a result of foreclosure of a mortgage on the unit or a deed in lieu thereof.

(2) Is given in the same manner as is required for the giving of the conversion notice.

(3) Is given to all persons who were entitled to receive the conversion notice and who continue to be in lawful occupancy at the time such notice of revocation is given. The giving of a notice of revocation revokes all rights granted under this section but does not revoke the rights granted to residential tenants under subsection (a) or (f), and such rights shall be deemed to have been incorporated in each residential tenant's lease.

(j) Waiver of purchase rights.--Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant may waive his right to purchase a unit under subsection (b) if the waiver is in writing, is acknowledged and is given in consideration of:

(1) an extension of the term of the tenant's tenancy and right of occupancy under this subpart beyond the time period required by subsections (a) and (f) as applicable;

(2) the tenant entering into an agreement to purchase another unit in the planned community; or

(3) all occupants of the unit making alternative living arrangements.

(k) Alteration of terms of tenancy.--Notwithstanding any provisions of subsection (a) or (f), the terms of the tenancy of a tenant or subtenant may be altered with the express written consent of that tenant or subtenant, and such altered terms shall then be the terms of tenancy referred to in this section.

(l) Application of section.--The provisions of this section shall apply only with respect to conversion buildings in which one or more residential tenants or residential subtenants are in lawful occupancy on the conversion notice date, and the only tenants who are entitled to exercise the rights granted under this section are residential tenants or residential subtenants:

(1) who are in lawful occupancy of conversion building on the date the declarant gives the conversion notice; or

(2) who commence their tenancy after the notice of conversion is given to the other residential tenants without having been notified in writing, at or prior to the commencement of their tenancy, that the property is then a

planned community and that they are not entitled to the rights granted under this section. Such rights continue only so long as the lawful occupancy of the tenant or subtenant continues.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsecs. (d) and (j)(1).

Cross References. Section 5410 is referred to in section 5103 of this title.

§ 5411. Warranty against structural defects.

(a) Scope.--Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) General rule.--

(1) A declarant warrants against structural defects in structures constructed, modified, altered or improved by or on behalf of such declarant in:

(i) each of the units and the controlled facilities that are part of a unit for two years from the date each unit is conveyed to a bona fide purchaser; and

(ii) all of the controlled facilities that are not part of a unit and all common facilities for two years except facilities which have been dedicated to a municipality, municipal authority or other governmental unit.

(2) Only the association may bring an action for breach of warranty with respect to common facilities and the controlled facilities that are not part of a unit. An action for breach of warranty with respect to one or more units or controlled facilities that are a part of a unit may be brought either by the association or an owner of an affected unit. Any conveyance of a unit during the two-year warranty period shall be deemed to transfer to the purchaser all of the declarant's warranties created under this section. The two years shall begin, as to each of the controlled facilities that are not part of a unit, whenever the controlled facilities that are not part of the unit have been completed and, as to each common facility, whenever such common facilities have been completed or, if later:

(i) As to any controlled facilities that are not part of a unit and as to common facilities within any additional real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser.

(ii) As to any controlled facilities that are not part of a unit and as to common facilities within any convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser.

(iii) As to any controlled facilities that are not part of a unit and as to common facilities within any other portion of the planned community, at the time the first unit therein is conveyed to a bona fide purchaser.

(c) Planned communities containing conversion buildings.--A declarant of a planned community containing one or more conversion building warrants as follows:

(1) That there are no structural defects in components installed anywhere in the planned community or in work done or improvements made by or on behalf of the declarant anywhere in the planned community.

(2) That all units and common elements in each conversion building have been inspected for visible

structural and mechanical defects and for other visible conditions that adversely affect the health or safety of residential occupants, as required by section 5404(a)(1) (relating to public offering statement; planned communities containing conversion buildings), except no such inspection is required of any unit if the tenant or other lawful occupant of the unit does not permit such inspection to be conducted.

(3) That any defects and other visible conditions found have been repaired.

The warranties under subsection (b) shall be applicable to any units and common elements that are located within a building that contains or comprises one or more units and is not a conversion building. Otherwise, the declarant may offer the units, common elements or both in an "as is" condition. The declarant of a planned community containing any conversion buildings may also give a more extensive warranty in writing. The times at which the warranties required by this subsection commence and the duration of such warranties shall be as provided in subsection (b).

(d) Exclusion or modification of warranty.--Except with respect to a purchaser of a unit for residential use, the warranty against structural defects:

(1) May be excluded or modified by agreement of the parties.

(2) Is excluded by expression of disclaimer, such as "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(e) Limitation of actions.--No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins, provided, however, that the limitation period affecting a right of action by the association under this section shall be six years after the warranty begins or two years after the unit owners elect an executive board under section 5303(e) (relating to executive board members and officers), whichever is later.

(f) Disclaimer of implied warranties.--To the extent permitted by applicable law, a declarant may disclaim implied warranties applicable to any unit or common elements to which the warranty provided by this section applies, provided such disclaimer is set forth in the contract for the sale of a unit and in the public offering statement for the planned community of which the unit or common element is a part. The disclaimer required under this subsection shall be set forth in 14-point boldface type.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

2018 Amendment. Act 84 amended subsec. (e).

1998 Amendment. Act 37 amended subsec. (b) and added subsec. (f).

Cross References. Section 5411 is referred to in sections 5102, 5103, 5320, 5401, 5404 of this title.

§ 5412. Effect of violations on rights of action.

If a declarant or any other person subject to this subpart violates any provision of this subpart or any provisions of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of the subpart and, if appropriate, the prevailing

party may be entitled to an award of costs and reasonable attorney fees.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

Cross References. Section 5412 is referred to in section 5102 of this title.

§ 5413. Labeling of promotional material.

If any improvement contemplated in a planned community is required by section 5210 (relating to plats and plans) to be labeled "NEED NOT BE BUILT" on a plat or plan or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

§ 5414. Declarant's obligation to complete and restore.

(a) Completing improvements.--The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to section 5210 (relating to plats and plans).

(b) Repair and restoration.--The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the planned community, of any portion of the planned community affected by the exercise of rights reserved pursuant to or created by sections 5211 (relating to conversion and expansion of flexible planned communities), 5212 (relating to withdrawal of withdrawable real estate), 5217 (relating to declarant offices, models and signs) and 5218 (relating to easement to facilitate completion, conversion and expansion).

(c) Substantial completion prerequisite to conveyance.--A unit which is part of or constitutes a structure shall not be conveyed to a person other than a successor to any special declarant rights unless all structural components and common element mechanical systems of the structure containing or constituting such unit or units are substantially completed to the extent required of the declarant so as to permit the use of such unit or units and any limited common elements appurtenant thereto for their intended use. Such substantial completion shall be evidenced by a recorded certification of completion executed by an independent registered surveyor, architect or professional engineer with regard to any such structure.

(d) Substantial completion of unit.--No interest in a unit shall be conveyed to a person other than a successor to any special declarant rights until the unit is substantially completed in accordance with the descriptions set forth in both the declaration under section 5205 (relating to contents of declaration; all planned communities) and in the public offering statement under section 5402(a) (relating to public offering statement; general provisions), as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or professional engineer.

(e) Construction of section.--Nothing contained in this subpart shall prevent the offering for sale of a unit or interest in a unit or the execution of any agreement to sell and purchase a unit or any interest in a unit (as opposed to actual conveyance) prior to the completion of the unit or any other portion of the planned community.

Cross References. Section 5414 is referred to in section 5402 of this title.

SUBPART E
USES OF PROPERTY

Chapter

55. Adult-Oriented Establishments

Enactment Note. Subpart E was added October 16, 1996, P.L.696, No.120, eff. 60 days.

CHAPTER 55
ADULT-ORIENTED ESTABLISHMENTS

Sec.

- 5501. Legislative findings and intent.
- 5502. Definitions.
- 5503. Requirements for adult-oriented establishments.
- 5504. Liability of operator.
- 5505. Establishments open for inspection.
- 5506. Civil action to enjoin or abate violations.
- 5507. Violation of abatement order or injunction.
- 5508. Penalty.
- 5509. Existing remedies preserved.

Enactment Note. Chapter 55 was added October 16, 1996, P.L.696, No.120, eff. 60 days.

§ 5501. Legislative findings and intent.

(a) **Findings.**--The General Assembly finds as follows:

(1) There are within this Commonwealth a number of adult-oriented establishments which require special regulation by law and supervision by public safety agencies in order to protect and preserve the health, safety and welfare of patrons of these establishments, as well as the health, safety and welfare of the citizens of this Commonwealth.

(2) Statistics and studies performed in a substantial number of communities in this Commonwealth, in the United States and by the State of Delaware indicate that:

(i) large numbers of persons, primarily male, frequent adult-oriented establishments, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called adult motion pictures, videotapes or live entertainment or a combination of motion pictures, videotapes and live entertainment;

(ii) the closed booths, cubicles, studios and rooms and holes in partitions between booths, cubicles, studios and rooms have been used by patrons, clients or customers of adult-oriented establishments for the purpose of engaging in sexual acts;

(iii) male and female prostitutes have been known to frequent the establishments in order to provide sex for hire to the patrons, clients or customers within the booths, cubicles and rooms;

(iv) doors, curtains, blinds and/or other closures installed in or on the entrances or exits, or both, of the booths, cubicles, studios and rooms which are closed while the booths, cubicles, studios and rooms are in use encourage patrons using the booths, cubicles, studios and rooms to engage in sexual acts in the closures and through holes in partitions between the closures with

prostitutes, patrons, clients or customers, thereby promoting and encouraging prostitution and the commission of sexual acts which result in the direct exchange of bodily fluids which put the participants at high risk for contracting communicable diseases, including AIDS, and which cause blood, semen and urine to be deposited on the floors or walls, or both, of the booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come in contact with such deposits; and

(v) the reasonable regulation and supervision of such adult-oriented establishments tend to discourage sexual acts and prostitution and thereby promote the health, safety and welfare of the patrons, clients and customers of these establishments.

(3) The continued unregulated operation of such adult-oriented establishments, including, without limitation, those specifically cited in paragraph (1), is and would be detrimental to the general health, safety and welfare of the citizens of this Commonwealth.

(4) The Constitution of Pennsylvania grants to the General Assembly power, especially police power, to enact reasonable legislation to regulate and supervise adult-oriented establishments in order to protect the public health, safety and welfare.

(b) Intent.--It is not the intent of the General Assembly in enacting this legislation to deny to any person rights of speech protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor is it the intent of the General Assembly to impose by this chapter any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books and other materials. Further, by enacting this legislation, the General Assembly does not intend to deny or restrict the rights of any adult to obtain or view, or both, any sexually oriented materials protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of sexually oriented materials may have to sell, distribute or exhibit these materials.

§ 5502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adult bookstore." An establishment having a substantial or significant portion of its stock and trade in, or an establishment which as one of its principal business purposes offers for sale, books, films, video cassettes or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and, in conjunction therewith, has facilities for the presentation of adult entertainment for observation by patrons.

"Adult entertainment."

(1) An exhibition of any adult-oriented motion pictures, meaning those distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(2) A live performance, display or dance of any type which has as a significant or substantial portion of the performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified

anatomical areas, removal of articles of clothing or appearing unclothed, pantomiming, modeling or any other personal services offered customers.

"Adult mini-motion picture theater." An enclosed building with a capacity of less than 50 persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

"Adult motion picture theater." An enclosed building with a capacity of 50 or more persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

"Adult-oriented establishment." The term includes, without limitation, the following establishments when operated for profit, whether direct or indirect:

- (1) Adult bookstores.
- (2) Adult motion picture theaters.
- (3) Adult mini-motion picture theaters.
- (4) Any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or where an entertainer provides adult entertainment to a member of the public, a patron or a member.
- (5) An adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

The term "booths, cubicles, rooms, studios, compartments or stalls" for purposes of defining "adult-oriented establishments" does not mean enclosures which are private offices used by the owner, manager or persons employed on the premises for attending to the tasks of their employment, and which are not held out to the public for the purpose of viewing motion pictures or other entertainment for a fee, and which are not open to any persons other than employees.

"Employee." Any and all persons, including independent contractors, who work in or at or render any service directly related to the operation of an adult-oriented establishment.

"Entertainer." A person who provides entertainment within an adult-oriented establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

"Inspector." An employee of a municipality's public health department authorized and designated by the director of the department, an employee of a municipality's department of inspections and permits authorized and designated by the director of the department, an employee of a municipality's police department authorized by the commanding officer of the police department or other persons designated by the governing body of a municipality to inspect premises regulated under this chapter to cooperate in taking the required actions authorized by this chapter where violations are found on a premises and to request correction of unsatisfactory conditions found on a premises.

"Minor." A person under 18 years of age.

"Operator." A person, partnership or corporation operating, conducting or maintaining an adult-oriented establishment.

"Sexual activities." The term does not include any of the following:

(1) Medical publications or films or bona fide educational publications or films.

(2) Any art or photography publications which devote at least 25% of the lineage of each issue to articles and advertisements dealing with subjects of art or photography.

(3) Any news periodical which reports or describes current events and which from time to time publishes photographs of nude or seminude persons in connection with the dissemination of the news.

(4) Any publications or films which describe and report different cultures and which from time to time publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the populations.

"Specified anatomical areas."

(1) Less than completely and opaquely covered:

(i) human genitals or pubic region;

(ii) buttocks; or

(iii) female breasts below a point immediately above the top of the areola.

(2) Human male genitals in a discernible turgid state, even if completely opaquely covered.

"Specified sexual activities." The term includes any of the following:

(1) Human genitals in a state of sexual stimulation or arousal.

(2) Acts of human masturbation, sexual intercourse or sodomy.

(3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

§ 5503. Requirements for adult-oriented establishments.

(a) Loitering by minors prohibited.--No operator or employee of an adult-oriented establishment shall permit any minor to loiter in any part of the establishment, including parking lots immediately adjacent to the establishment used by patrons of an adult-oriented establishment.

(b) Interior plan.--Every adult-oriented establishment doing business in this Commonwealth shall be well lighted at all times and be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls where adult entertainment is provided shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. It shall be unlawful to install enclosed booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures or other types of adult-oriented entertainment.

(c) Certain apertures prohibited.--No adult-oriented establishment shall contain partitions between subdivisions of a room or portions or parts of a building, structure or premises with an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partitions.

(d) Illumination and visibility.--The operator of each adult-oriented establishment shall be responsible for and shall provide that any room or other area used for the purpose of

viewing adult-oriented motion pictures or other types of live adult entertainment shall be well lighted and readily accessible at all times and shall be continuously open to view in its entirety. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level. It shall be the duty of the operator and the operator's agents to ensure that the illumination required by this subsection is maintained at all times that a patron is present in the premises.

§ 5504. Liability of operator.

Every act or omission by an employee constituting a violation of this chapter shall be deemed the act or omission of the operator if the act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for the act or omission in the same manner as if the operator committed the act or caused the omission.

§ 5505. Establishments open for inspection.

All adult-oriented establishments shall be open to inspection at all reasonable times by inspectors.

§ 5506. Civil action to enjoin or abate violations.

(a) **Action authorized.**--An action to enjoin or abate a violation of this chapter may be brought in the name of the Commonwealth of Pennsylvania by the Attorney General, the district attorney of the county concerned or the solicitor of the municipality in which the adult-oriented establishment is located. The action shall be brought and tried as an action in equity in the court of common pleas of the county in which the adult-oriented establishment is located.

(b) **Procedure.**--

(1) If it is made to appear, by affidavits or otherwise, to the satisfaction of the court that a violation exists, a temporary writ of injunction shall forthwith issue, directed to the operator of the adult entertainment establishment or the owner of the premises, or both, restraining the operator or owner from continuing or permitting the continuation of any violation or violations of this chapter until the conclusion of the hearing and a decision by the court. No bond shall be required in instituting such proceedings. This chapter, insofar as it provides for methods of service and bond, shall not be deemed to be suspended or affected by the Pennsylvania Rules of Civil Procedure governing the action in equity.

(2) It shall not be necessary for the court to find the property involved was being unlawfully used at the time of the hearing, but, on finding that the material allegations of the petition are true, the court shall order that neither the premises nor any part of the premises be used in violation of this chapter. Upon judgment of the court ordering the violations to be abated, the court may order that neither the premises nor any part of the premises shall be occupied or used for any purpose for up to one year following the date of the court's order, but the court may, in its discretion, permit the premises to be occupied or used by the operator or owner if the operator or owner, or both, posts a bond or a joint bond in the discretion of the court with sufficient surety to be approved by the court in the penal and liquidated sum of not less than \$1,000 nor more than \$2,500, payable to the Commonwealth of Pennsylvania

and conditioned that neither the building nor a part of the building be used in violation of this chapter and that the operator will pay all fines, costs and damages that may be assessed for any violation of this chapter upon the premises.

(3) Service of any preliminary or permanent injunction shall be made personally upon the operator and owner of the premises if such persons can be found in the county. If the operator or owner cannot be found, a copy of the order shall be delivered to any employee of the operator on the establishment premises or, in the case of the owner, upon an agent, if any. If no employee or agent can be found or service cannot be made on an employee or agent of the owner, then service shall be made as the court may direct. Any person other than the operator or owner who shall be served with any notice of an injunction shall within 24 hours thereafter deliver the notice to the operator or owner, as the case may be, or mail it to the operator or owner by registered mail if the address of the operator or owner, as the case may be, is known to the person served.

Suspension by Court Order. Subsec. (b)(1) was suspended July 31, 1997, S.Ct. Order, to the extent that section 5506(b)(1) provides that Chapter 55, insofar as it provides for methods of service and bond, shall not be deemed to be suspended or affected by the Pennsylvania Rules of Civil Procedure governing the action in equity.

§ 5507. Violation of abatement order or injunction.

An operator or owner of an adult entertainment establishment or any agent of the operator or owner who after any injunction has been granted uses the premises or any part of the premises, or knowingly permits the premises or any part of the premises to be used in violation of an order of abatement or injunction, shall be subject to summary punishment as for contempt of court, in the manner now provided by law.

§ 5508. Penalty.

A person violating any provision of this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$300 or to imprisonment for not more than 90 days, or both.

§ 5509. Existing remedies preserved.

This chapter shall not be deemed to affect any remedy available against an adult entertainment establishment or adult bookstore.

SUBPART F
PUBLIC LANDS

Chapter

61. Vacant and Unimproved Public Lands

Enactment. Subpart F was added November 22, 2000, P.L.652, No.88, effective in 60 days.

CHAPTER 61
VACANT AND UNIMPROVED PUBLIC LANDS

Sec.

- 6101. Definitions.
- 6102. Duties of commission.
- 6103. Application.

- 6104. Report.
- 6105. Acquisition determination.
- 6106. State forests.
- 6107. Appraisals.
- 6108. Patents.
- 6109. Prohibitions and exceptions.
- 6110. Issuance of patents for unappropriated lands.
- 6111. Satisfaction of claims.
- 6112. Prohibition of warrants.
- 6113. Caveats.
- 6114. Refund.

Enactment. Chapter 61 was added November 22, 2000, P.L.652, No.88, effective in 60 days.

Construction of Chapter. Section 3 of Act 88 of 2000 provided that the addition of Chapter 61 is a codification of the act of July 9, 1959, P.L.510, No.137, known as the Pennsylvania Public Lands Act, and shall be construed a continuation of Act 137.

§ 6101. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The Board of Property.

"Commission." The Pennsylvania Historical and Museum Commission.

"Department." The Department of Conservation and Natural Resources of the Commonwealth.

"Institution." Any:

(1) healing, preventive mental health, educational, correctional or penal institution;

(2) almshouse; or

(3) county or city home;

operated by the Commonwealth or a political subdivision.

"Municipality authority." A county, county authority, municipality authority, city, borough, town, township or school district.

"Public lands." Includes all of the following:

(1) All lands within the territorial limits of the Commonwealth which have not been confirmed to the former proprietaries or their grantees by the act of November 27, 1779 (1 Sm.L.479, Ch.863), entitled "An act for vesting the estates of the late proprietaries of Pennsylvania in this commonwealth," and which have not been granted, conveyed or patented by the Commonwealth to the United States, the Commonwealth or any administrative branch or department of either or to any person or corporation, public or private.

(2) All vacant and unappropriated lands; all lands for which application has been made or warrants have been granted by the Commonwealth, the titles to which have not been completed by the granting of patents; and all other lands which have been sold by commissioners appointed under acts of the General Assembly, the titles to which have not been completed by the granting of patents.

The term does not include lands formerly granted, conveyed or patented by the proprietaries or by the Commonwealth to a person which have subsequently become the property of the Commonwealth by escheat, condemnation, confiscation, dedication, gift, grant, purchase or otherwise.

"Secretary." The Secretary of Conservation and Natural Resources of the Commonwealth.

"Unappropriated lands." Lands for which no patent has been issued by the Commonwealth.

"Unimproved lands." Lands which show no signs of occupancy or cultivation.

"Vacant lands." Lands to which no office rights are outstanding.

§ 6102. Duties of commission.

The commission has the following powers and duties:

(1) To act as the Land Office of the Commonwealth, maintaining and preserving the records of all conveyances from the proprietaries and the Commonwealth to the purchasers of land, including applications, warrants, return of surveys and reports denying applications.

(2) To maintain and preserve:

(i) papers relating to the surveys of this Commonwealth and county lines;

(ii) reports of commissioners relating to the boundary lines of this Commonwealth;

(iii) maps and other papers lodged with the Land Office and pertaining to the colonial history of this Commonwealth;

(iv) the minutes of the Canal Commissioners;

(v) contracts for section profile maps;

(vi) other records relating to the public works;

and

(vii) relevant records relating to titles to real estate owned or to be acquired by the Commonwealth.

(3) To furnish copies of records and documents in accordance with statutory or regulatory fees.

(4) To promulgate regulations to administer this chapter.

§ 6103. Application.

(a) Commonwealth rights.--The right of a person to a patent for vacant or unappropriated lands is subject to the right of the department to formally acquire for the department on behalf of the Commonwealth and have vacant or unappropriated lands patented to the Commonwealth for State forest purposes or State park purposes as provided by section 6105 (relating to acquisition determination).

(b) Survey.--A person may apply for a warrant to have a survey made of any tract of vacant or unappropriated land.

(c) Investigation.--The department, with the cooperation of the commission, shall investigate to determine whether office rights have been granted for a tract of land and whether the tract of land is vacant or unappropriated if an applicant does all of the following:

(1) Completes an application prescribed by the department.

(2) Gives 30 days' notice of the filing of the application by publication once a week for three successive weeks in a newspaper of general circulation in the area where the land is situate. The applicant must furnish proof of publication to the department.

(3) Submits a certified abstract of title.

(4) Submits the survey under subsection (b).

Cross References. Section 6103 is referred to in section 6108 of this title.

§ 6104. Report.

(a) Total.--If the department determines that the land applied for is not vacant or unappropriated, it shall file its report.

(b) Partial.--If the report discloses that a part only of the land applied for is not vacant or unappropriated, the applicant may proceed with respect to the balance under section 6106 (relating to State forests).

(c) Appeal.--The report shall be conclusive upon the applicant, subject to the right of the applicant to appeal to the board within 30 days under regulations of the board.

§ 6105. Acquisition determination.

(a) Requirement.--If the department finds the land to be vacant and unimproved or unappropriated and unimproved, the secretary shall determine whether it is desirable and practicable for the department to formally acquire the land for State forest purposes or State park purposes.

(b) Action.--Within two months of receipt of the application, the department shall do all of the following:

(1) Make one of the following determinations:

(i) To maintain the land on behalf of the Commonwealth. A determination under this subparagraph must be signed by the secretary and be accompanied by an abstract with certificate and a survey.

(ii) To relinquish the Commonwealth's rights to the land.

(2) Notify the applicant of the determination under paragraph (1).

Cross References. Section 6105 is referred to in sections 6103, 6106, 6107 of this title.

§ 6106. State forests.

Upon a determination under section 6105(b)(1)(i) (relating to acquisition determination), a patent to the land shall issue, on approval of the Governor, to the department for State forest purposes or State park purposes without the payment of purchase money, interest or fees.

Cross References. Section 6106 is referred to in section 6104 of this title.

§ 6107. Appraisals.

(a) Requirement.--Upon a determination under section 6105(b)(1)(ii) (relating to acquisition determination), the land shall be appraised by a certified independent real estate appraiser selected by the department.

(b) Procedure.--

(1) The appraiser must swear or affirm before an officer authorized to administer oaths:

(i) faithfully to perform the duties prescribed in this section; and

(ii) that the appraiser is not directly or indirectly interested in the application.

(2) The appraiser shall determine the value of the real estate, taking into consideration soil, timber, fisheries, minerals, location and other natural characteristics of the land. In the case of improved land, the value of the improvements not made by the Commonwealth may not be included in the valuation.

(3) The appraiser shall prepare and transmit the appraisal to the department.

Cross References. Section 6107 is referred to in section 6108 of this title.

§ 6108. Patents.

(a) Costs.--Upon receipt of an appraisal under section 6107 (relating to appraisals), the department shall notify the

applicant and request the amount due the Commonwealth. The expenses incident to the investigation, advertising, survey and appraisal must be paid by the applicant.

(b) Issuance.--The department shall issue a patent to an applicant upon completion of all of the following:

(1) Approval by the department of the material required by section 6103(c)(4) (relating to application).

(2) Payment of the amount under subsection (a). If the applicant does not make payment within three months from the request under subsection (a), the applicant shall be deemed to have abandoned the application, and the department may:

(i) grant a patent to a subsequent applicant upon payment of the amount under subsection (a); or

(ii) if more than one year has elapsed since the receipt of the appraisal, require a current appraisal.

(3) Compliance with law, including regulations promulgated by the department.

(4) Final disposition in the applicant's favor of any entered caveat.

(5) Approval by the Governor.

§ 6109. Prohibitions and exceptions.

(a) Prohibition.--Except as set forth in subsection (b), no application shall be accepted and no warrant, easement or other office right shall be granted for land, including an island, lying in the bed of a navigable river or stream declared by law to be a public highway.

(b) Exceptions.--Subsection (a) does not apply as follows:

(1) A warrant or other office right may be granted and an appraisal made on land intervening between former islands for which patents have been granted and the former mainland of a navigable river where the intervening lands form an obstruction to navigation and are without the ordinary low water lines of such navigable rivers, as shown by the certificate of the United States Secretary of Defense. A warrant or office right under this paragraph requires written approval of the department, following the submission of formal application and plans showing the manner in which the land within the flood water channel of the navigable river will be occupied and used and the extent to which the flood carrying capacity of the channel will be reduced and modified. Preference in granting a patent shall be given, with the approval of the Governor, to the owner of the land abutting the land intervening between the former island to which a patent has been granted and the former mainland of the navigable rivers. A patent, with the approval of the Governor, may be issued in accordance with any agreement entered into by all abutting landowners providing for an allotment of the land intervening between the former islands.

(2) An easement may be granted for a sewage treatment plant and intercepting sewer system and facility necessary and incidental to the plant under, across and in the bed of a navigable river or stream declared by law to be a public highway for the purpose of diverting sewage and industrial wastes from the river or stream to the sewage treatment plant if construction permits have been issued by the Sanitary Water Board, the department and the United States Secretary of Defense. The department shall, on application by a municipality authority or institution, make a grant to the municipality of the easement in the name of the Commonwealth, upon approval of the Governor and in a form approved by the Attorney General, without the payment of purchase money, interest or fees.

(3) The following apply:

(i) The department is authorized to have a survey and appraisal made under this chapter and issue a patent, upon the approval of the Governor, of so much of the bed of a river or stream below low water mark as is no longer useful for the ordinary purposes of navigation and is abandoned if the Federal Government:

(A) enters an agreement with the owners of land to be taken to promote sanitation, prevent floods or improve navigation or for other purposes; and

(B) authorizes the widening, straightening or improvement of the main channel of a navigable river or stream; and

(C) permits the abandonment and filling up of other parts of the river or stream which are no longer useful for the ordinary purposes of navigation.

(ii) Preference in granting a patent under this paragraph shall be given to an owner of land abutting the portion of the bed of a river or stream which (portion) is subject to patent. A patent, with the approval of the Governor, may issue in accordance with an agreement entered into by all abutting landowners providing for an allotment of the land abandoned and subject to patent.

(iii) Evidence that any part of a river or stream has ceased to be useful for the ordinary purposes of navigation and is the subject of warrant, survey and patent must include all of the following:

(A) A certified copy of any Federal statute in relation to the area.

(B) A copy of any agreement entered into between the United States and the owners of the land, accompanied by proper plans showing the land to be taken; the river or stream as widened, straightened or improved; and the portion of the river or stream which is to be abandoned. The copy of the agreement and plans must be certified under the hand and seal of the United States Secretary of Defense and filed in the office of the secretary.

§ 6110. Issuance of patents for unappropriated lands.

The department shall, upon the presentation and approval of an application with satisfactory proof of ownership, including current survey and abstract of title, and the payment of patent fees amounting to \$25, with the approval of the Governor, grant a patent if all of the following apply:

(1) The records of the commission demonstrate that there have been warrants granted by the Commonwealth for lands authorized to be sold by statute or by statutorily appointed commissioners.

(2) Titles to the warrants under paragraph (1) have not been completed by the granting of patents.

§ 6111. Satisfaction of claims.

(a) **Scope.**--This section applies to land in this Commonwealth for which there is an outstanding office right granted before January 1, 1935.

(b) **Authorization.**--Upon payment of the fee under subsection (c), the department may do all of the following:

(1) Cancel liens, bonds and mortgages held by the department for unpaid purchase money and interest.

(2) Record the satisfaction of the obligation under paragraph (1).

(3) Certify the action taken under this subsection.

(c) **Fee.**--There is a fee of \$25 for each tract of land upon which an obligation is released under this section.

§ 6112. Prohibition of warrants.

(a) **General rule.**--Except as set forth in subsection (b), a warrant or other office right shall not issue for public land if any of the following apply:

(1) Settlement has been made on the land. This paragraph does not apply if the settlement has been abandoned continuously since January 1, 1935. If the settlement has been abandoned continuously since January 1, 1935, the land shall be deemed to be vacant or unappropriated.

(2) The land is totally or partially cleared and fenced.

(3) The land is otherwise improved, used or occupied and held by defined boundaries. This paragraph does not apply if the improvement has been abandoned continuously since January 1, 1935. If the improvement has been abandoned continuously since January 1, 1935, the land shall be deemed to be vacant or unappropriated.

(b) **Exception.**--A warrant or other office right for public land may issue to the person that has made the settlement or done the clearing, fencing or improvement. This subsection applies to any successor in interest to the person.

§ 6113. Caveats.

(a) **Authority.**--A person with a claim on land for which a warrant application has been made under this chapter may file a caveat with the department.

(b) **Costs.**--The caveator must deposit with the caveat a filing fee determined by the department and, in the case of vacant land, purchase money. The purchase money shall be returned to the caveator, less costs incurred by the board, if the board decides against the caveator and the caveator does not appeal the decision. If the caveator appeals the decision, the purchase money shall be held and disposed of as directed by the court making the final decision on the appeal.

(c) **Limitation.**--A caveat must be filed prior to the granting of the patent. No caveat shall be recognized for land after the patent of the Commonwealth has been granted for the land.

(d) **Procedure.**--Upon filing of a caveat, the department shall notify the original applicant and forward the application for warrant and the caveat, with all related instruments, to the board for decision.

(e) **Effect.**--The filing of a caveat shall suspend issuance of the patent until the board disposes of the matter.

(f) **Perfection.**--If the board decides in favor of the caveator, the caveator must proceed promptly to perfect title under this chapter and in compliance with regulations of the department, or the caveator shall be deemed to have abandoned the claim and right.

§ 6114. Refund.

If the board decides against the issuing of a warrant or other office right, any purchase money paid shall be returned to the applicant, less all expenses incurred by the department and board.

PART III

RESIDENTIAL REAL PROPERTY

Chapter

71. General Provisions

- 73. Seller Disclosures
- 74. Repudiation of Discriminatory Real Estate Covenants
- 75. Home Inspections
- 81. Private Transfer Fee Obligations

Enactment. Part III was added December 20, 2000, P.L.815, No.114, effective in one year unless otherwise noted.

CHAPTER 71

GENERAL PROVISIONS

Sec.

- 7101. Short title of part.
- 7102. Definitions.
- 7103. Application of part.

Enactment. Chapter 71 was added December 20, 2000, P.L.815, No.114, effective in one year.

§ 7101. Short title of part.

This part shall be known and may be cited as the Residential Real Estate Transfers Law.

§ 7102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agent." Any broker, associate broker or salesperson, as defined in the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

"Agreement of transfer." A contract between a buyer and seller setting forth the terms of a residential real estate transfer.

"Buyer." Any person receiving any estate or interest in real property in a transfer subject to this part.

"Commission." The State Real Estate Commission.

"Final settlement." The time at which the buyer and seller have signed and delivered all papers and consideration necessary to convey title to the estate or interest in real property being conveyed.

"Material defect." A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

"Seller." Any person transferring any estate or interest in residential real property in a transfer subject to this part.

"Storm water facility." A basin, pond, ditch, drain, swale, culvert, pipe or other manmade feature of land which was constructed in accordance with Federal, State or local law or regulation to temporarily or permanently convey or manage storm water.

(June 19, 2015, P.L.23, No.6, eff. imd.)

2015 Amendment. Act 6 added the def. of " storm water facility."

Cross References. Section 7102 is referred to in sections 7502, 7508 of this title.

§ 7103. Application of part.

(a) **General rule.**--This part shall apply to and the term "residential real estate transfer" when used in this part shall mean a transfer of any interest in real property located within this Commonwealth, other than a transfer described in subsection (b), that consists of not less than one nor more than four residential dwelling units, whether by sale, exchange, installment sales contract, lease with an option to purchase, grant or transfer of unit in a residential condominium or cooperative.

(b) **Exceptions.**--This part shall not apply to a transfer:

(1) Pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain and condemnation and transfers resulting from a decree for specific performance.

(2) To a mortgagee by a mortgagor or successor in interest who is in default; to a beneficiary of a deed of trust by a trustee or successor in interest who is in default; by any foreclosure sale after default in an obligation secured by a mortgage; by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale; or by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or who has acquired the real property by a deed in lieu of foreclosure.

(3) From one co-owner to one or more other co-owners.

(4) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(5) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to the decree.

(6) By a corporation, partnership or other association to its shareholders, partners or other equity owners in connection with the liquidation of the corporation, partnership or other association.

(7) Of a property to be converted by the buyer into a use other than residential use or to be demolished.

(8) Of unimproved real property.

Cross References. Section 7103 is referred to in section 7502 of this title.

CHAPTER 73
SELLER DISCLOSURES

Sec.

- 7301. Short title of chapter.
- 7302. Application of chapter.
- 7303. Disclosure of material defects.
- 7304. Disclosure form.
- 7305. Delivery of disclosure form.
- 7306. Information unavailable to seller.
- 7307. Information subsequently rendered inaccurate.
- 7308. Affirmative duty of seller.

- 7309. Nonliability of seller.
- 7310. Nonliability of agent.
- 7311. Failure to comply.
- 7312. Amendment of disclosure.
- 7313. Specification of items for disclosure no limitation on other disclosure obligations.
- 7314. Cause of action.
- 7315. Preemption of local requirements.

Enactment. Chapter 73 was added December 20, 2000, P.L.815, No.114, effective in one year.

Cross References. Chapter 73 is referred to in section 7503 of this title.

§ 7301. Short title of chapter.

This chapter shall be known and may be cited as the Real Estate Seller Disclosure Law.

§ 7302. Application of chapter.

(a) General rule.--This chapter shall apply to all residential real estate transfers except the following:

(1) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust.

(2) Transfers of new residential construction that has not been previously occupied when:

(i) the buyer has received a one-year or longer written warranty covering such construction;

(ii) the dwelling has been inspected for compliance with the applicable building code or, if there is no applicable code, for compliance with a nationally recognized model building code; and

(iii) a certificate of occupancy or a certificate of code compliance has been issued for the dwelling.

(b) Limitations in the case of condominiums or cooperatives.--Any seller of a unit in a condominium created under Subpart B of Part II (relating to condominiums) or a similar provision of prior law or a cooperative as defined in section 4103 (relating to definitions) shall be obligated to make disclosures under this chapter only with respect to the seller's own unit and shall not be obligated by this chapter to make any disclosure with respect to any common elements or common facilities of the condominium or cooperative. The provisions of section 3407 (relating to resales of units) shall control disclosures a seller is required to make concerning common elements in a condominium, and section 4409 (relating to resales of cooperative interests) shall control disclosures a seller is required to make concerning common elements in a cooperative.

§ 7303. Disclosure of material defects.

Any seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller by completing all applicable items in a property disclosure statement which satisfies the requirements of section 7304 (relating to disclosure form). A signed and dated copy of the property disclosure statement shall be delivered to the buyer in accordance with section 7305 (relating to delivery of disclosure form) prior to the signing of an agreement of transfer by the seller and buyer with respect to the property.

§ 7304. Disclosure form.

(a) General rule.--A form of property disclosure statement that satisfies the requirements of this chapter shall be promulgated by the State Real Estate Commission. Nothing in

this chapter shall preclude a seller from using a form of property disclosure statement that contains additional provisions that require greater specificity or that call for the disclosure of the condition or existence of other features of the property.

(b) Contents of property disclosure statement.--The form of property disclosure statement promulgated by the State Real Estate Commission shall call for disclosures with respect to all of the following subjects:

- (1) Seller's expertise in contracting, engineering, architecture or other areas related to the construction and conditions of the property and its improvements.
- (2) When the property was last occupied by the seller.
- (3) Roof.
- (4) Basements and crawl spaces.
- (5) Termites/wood destroying insects, dry rot and pests.
- (6) Structural problems.
- (7) Additions, remodeling and structural changes to the property.
- (8) Water and sewage systems or service.
- (9) Plumbing system.
- (10) Heating and air conditioning.
- (11) Electrical system.
- (12) Other equipment and appliances included in the sale.
- (13) Soils, drainage, boundaries and sinkholes.
- (14) Presence of hazardous substances.
- (15) Condominiums and other homeowners associations.
- (16) Legal issues affecting title or that would interfere with use and enjoyment of the property.
- (17) Condition, if known, and location of all storm water facilities, including a statement disclosing whether ongoing maintenance of the storm water facilities is the responsibility of the property owner or the responsibility of another person or entity.

(c) Transitional rule.--Until a form of property disclosure statement has been promulgated by the commission, the form prescribed under the act of July 2, 1996 (P.L.500, No.84), known as the Real Estate Seller Disclosure Act, shall be deemed to be the form contemplated under subsection (b).
(June 19, 2015, P.L.23, No.6, eff. imd.)

2015 Amendment. Act 6 amended subsec. (b)(13) and added subsec. (b)(17). See section 3 of Act 6 in the appendix to this title for special provisions relating to revisions to property disclosure statement.

References in Text. The act of July 2, 1996, P.L.500, No.84, known as the Real Estate Seller Disclosure Act, referred to in subsec. (c), was repealed by the act of December 20, 2000, P.L.815, No.114. The subject matter is now contained in Part III of this title.

Cross References. Section 7304 is referred to in section 7303 of this title.

§ 7305. Delivery of disclosure form.

(a) Method of delivery.--The seller shall deliver the property disclosure statement to the buyer by personal delivery; first class mail; certified mail, return receipt requested; or facsimile transmission to the buyer or the buyer's agent.

(b) Parties to whom delivered.--For purposes of this chapter, delivery to one prospective buyer or buyer's agent is deemed delivery to all persons intending to take title as co-tenants, joint tenants or as a tenant by the entireties with

the buyer. Receipt may be acknowledged on the statement, in an agreement of transfer for the residential real property or shown in any other verifiable manner.

Cross References. Section 7305 is referred to in section 7303 of this title.

§ 7306. Information unavailable to seller.

If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the seller, the seller may make a disclosure based on the best information available to the seller.

§ 7307. Information subsequently rendered inaccurate.

If information disclosed in accordance with this chapter is subsequently rendered inaccurate prior to final settlement as a result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the seller shall notify the buyer of the inaccuracy.

§ 7308. Affirmative duty of seller.

The seller is not obligated by this chapter to make any specific investigation or inquiry in an effort to complete the property disclosure statement. In completing the property disclosure statement, the seller shall not make any representations that the seller or the agent for the seller knows or has reason to know are false, deceptive or misleading and shall not fail to disclose a known material defect.

§ 7309. Nonliability of seller.

(a) **General rule.**--A seller shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if:

(1) the seller had no knowledge of the error, inaccuracy or omission;

(2) the error, inaccuracy or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected; or

(3) the error, inaccuracy or omission was based on information provided by a public agency, home inspector, contractor or person registered or licensed under an act referred to in section 7503(a) (relating to relationship to other laws) about matters within the scope of the agency's jurisdiction or such other person's occupation and the seller had no knowledge of the error, inaccuracy or omission.

(b) **Delivery of information by public agency.**--The delivery of any information required to be disclosed by this chapter to a prospective buyer by a public agency or other person providing information required to be disclosed under this chapter shall be deemed to comply with the requirements of this chapter and shall relieve the seller or the agent of the seller from any further duty under this chapter with respect to that item of information.

(c) **Report by expert.**--The delivery of a report or opinion prepared by a home inspector, contractor or person registered or licensed under an act referred to in section 7503(a) dealing with matters within the scope of the person's registration, license or expertise shall be sufficient compliance for application of the exemption provided under subsection (a)(3) if the information is provided to the prospective buyer in writing.

§ 7310. Nonliability of agent.

An agent of a seller or a buyer shall not be liable for any violation of this chapter unless the agent had actual knowledge of a material defect that was not disclosed to the buyer or of a misrepresentation relating to a material defect.

§ 7311. Failure to comply.

(a) **General rule.**--A residential real estate transfer subject to this chapter shall not be invalidated solely because of the failure of any person to comply with any provision of this chapter. However, any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of this chapter shall be liable in the amount of actual damages suffered by the buyer as a result of a violation of this chapter. This subsection shall not be construed so as to restrict or expand the authority of a court to impose punitive damages or apply other remedies applicable under any other provision of law.

(b) **Statute of limitations.**--An action for damages as a result of a violation of this chapter must be commenced within two years after the date of final settlement.

§ 7312. Amendment of disclosure.

Any disclosure made pursuant to this chapter may be amended in writing by the seller prior to the signing of an agreement of transfer by the seller and buyer.

§ 7313. Specification of items for disclosure no limitation on other disclosure obligations.

(a) **General rule.**--The specification of items for disclosure in this chapter or in any form of property disclosure statement promulgated by the State Real Estate Commission does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation or deceit in the transaction.

(b) **Responsibility of licensee.**--Nothing in this chapter shall abrogate or diminish the responsibility of a licensee under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(c) **Duty to provide form.**--An agent representing a seller must advise a seller of the seller's responsibilities under this chapter and must provide the seller with a copy of the form of property disclosure statement.

§ 7314. Cause of action.

A buyer shall not have a cause of action under this chapter against the seller or the agent for either or both of the seller or the buyer for:

- (1) material defects to the property disclosed to the buyer prior to the signing of an agreement of transfer by the seller and buyer;
- (2) material defects that develop after the signing of the agreement of transfer by the seller and buyer; or
- (3) material defects that occur after final settlement.

§ 7315. Preemption of local requirements.

(a) **General rule.**--Except as provided in subsection (b), a municipality or local authority shall not have the power to mandate that:

- (1) a seller or an agent of either or both the seller and the buyer make any particular disclosures to the buyer in connection with a residential real estate transfer; or
- (2) provisions on any particular subject be included in an agreement of transfer.

(b) **Exception.**--Subsection (a) shall not apply to an ordinance or regulation adopted by a municipality or local authority before the effective date of this section, and such an ordinance or regulation shall continue in full force and effect, except that the municipality or local authority shall not have the power after that date to amend the ordinance or regulation in a manner that:

- (1) imposes new or expanded disclosure requirements;

(2) increases the scope of any provision that must be included in an agreement of transfer; or

(3) imposes new requirements on any agent, buyer or seller involved in a residential real estate transfer.

CHAPTER 74

REPUDIATION OF DISCRIMINATORY REAL ESTATE COVENANTS

Sec.

7401. Scope of chapter.

7402. Definitions.

7403. Nullification of existing unlawful restrictive covenants.

7404. Repudiation of unlawful restrictive covenants.

7405. Form for repudiation.

7406. Unlawful restrictive covenants in declarations of common interest ownership communities.

7407. Unlawful restrictive covenants not in declarations of common interest ownership communities.

Enactment. Chapter 74 was added December 14, 2023, P.L.428, No.54, effective in 60 days unless otherwise noted.

§ 7401. Scope of chapter.

This chapter relates to real estate covenants that discriminate against individuals.

§ 7402. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The executive board or board of directors of a common interest ownership community.

"Common interest ownership community." Includes:

(1) A condominium as defined in section 3103 (relating to definitions).

(2) A cooperative as defined in section 4103 (relating to definitions).

(3) A planned community as defined in section 5103 (relating to definitions).

"Department." The Department of Community and Economic Development of the Commonwealth.

"Instrument." A deed, mortgage, declaration of restrictive covenants, conditions or covenants, easement or other similar document.

"Recorder." As follows:

(1) A county recorder of deeds or a county official or department responsible for the recording of documents in a county without a recorder of deeds.

(2) The term includes the Philadelphia Department of Records and the Allegheny County Department of Real Estate.

"Unlawful restrictive covenant." A covenant or other provision that purports to restrict ownership or occupancy of real property on the basis of a practice or policy of discrimination against individuals or groups covered under the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act, or 42 U.S.C. Ch. 45 (relating to fair housing) or which may hereafter become a protected class under Federal or State law. The term does not include a covenant or restriction affixed to a property by a religious organization that prevents the use of the property for purposes that would offend that religious organization or an age-based covenant or restriction intended to create a senior living community.

Effective Date. Section 2(1)(i) of Act 54 of 2023 provided that section 7402 shall take effect immediately.

§ 7403. Nullification of existing unlawful restrictive covenants.

(a) Unenforceable covenants.--An unlawful restrictive covenant contained in an instrument affecting title to real property, whether or not recorded, in this Commonwealth shall be null, void and unenforceable ab initio without need for further action by any person or recorder.

(b) Combined covenants.--If an unlawful restrictive covenant is contained in an instrument affecting title to real property that also contains other covenants or provisions that are not an unlawful restrictive covenant, the validity and enforceability of the remaining covenants or provisions, as well as the validity of the recorded instrument, shall not be affected by the nullification, voiding and unenforceability of the unlawful restrictive covenant.

Effective Date. Section 2(1)(i) of Act 54 of 2023 provided that section 7403 shall take effect immediately.

§ 7404. Repudiation of unlawful restrictive covenants.

(a) Landowner may file form.--An owner of real property, including a common interest ownership community, with an unlawful restrictive covenant recorded in the instrument may file a form described in section 7405 (relating to form for repudiation) with the recorder in the county where the real property is located to repudiate the unlawful restrictive covenant.

(b) Electronic filing.--A form filed under subsection (a) shall be in writing and may be filed electronically if the county allows for electronic recording of deeds.

(c) Duty of recorder.--The recorder shall record the form submitted under subsection (a).

(d) Fees prohibited.--A recorder may not assess a fee for the filing of a form under this section.

(e) Separation of covenant from instrument.--When the form submitted under subsection (a) is properly recorded, the repudiation of the unlawful restrictive covenant is effective and does not affect the validity of the instrument. The instrument shall be construed as if the unlawful restrictive covenant was never contained in the instrument.

Cross References. Section 7404 is referred to in section 7407 of this title.

§ 7405. Form for repudiation.

(a) Development.--No later than 90 days after the effective date of this section, the department shall develop and release a standardized form for landowners or other persons with an interest in real property to file with the recorder to repudiate an unlawful restrictive covenant within the interested person's instrument.

(b) Distribution.--No later than 30 days after the standardized form required in subsection (a) is approved in final form by the department, the department shall provide a "Repudiation of Unlawful Restrictive Covenant" form to each recorder in this Commonwealth and publish the form on the department's publicly accessible Internet website.

Cross References. Section 7405 is referred to in section 7404 of this title.

§ 7406. Unlawful restrictive covenants in declarations of common interest ownership communities.

(a) Board vote for removal.--Notwithstanding any other provision of law, a board of a common interest ownership community may, upon receipt of an opinion by independent legal counsel, consider an unlawful restrictive covenant to be repudiated by a vote of a majority of the members of the board and without further need for a vote by unit owners or approval from lenders on individual units, thereby repudiating the unlawful restrictive covenant.

(b) Unit owner request for repudiation.--If a unit owner in a common interest ownership community submits a written request to the board to repudiate an unlawful restrictive covenant, the board shall, no later than 90 days after receipt of the request, hold a meeting to determine whether an unlawful restrictive covenant exists and should be repudiated. If the board finds that an unlawful restrictive covenant exists and should be repudiated, the board shall take swift action to record the repudiation form.

§ 7407. Unlawful restrictive covenants not in declarations of common interest ownership communities.

If an instrument in the chain of title to the common elements in a condominium, in the common facilities or controlled facilities in a planned community or in the chain of title to a real estate cooperative includes an unlawful restrictive covenant, the board may perform a landowner repudiation in accordance with section 7404 (relating to repudiation of unlawful restrictive covenants).

CHAPTER 75
HOME INSPECTIONS

Sec.

- 7501. Short title of chapter.
- 7502. Definitions and index of definitions.
- 7503. Relationship to other laws.
- 7504. Duty of care of home inspectors.
- 7505. Consumer remedies.
- 7506. Required contractual provision regarding home inspections.
- 7507. Contracts with home inspectors.
- 7508. Home inspection reports.
- 7509. Liability insurance.
- 7510. Reliance by buyer.
- 7511. Penalties.
- 7512. Statute of limitations.
- 7513. Engineers and architects.

Enactment. Chapter 75 was added December 20, 2000, P.L.815, No.114, effective in one year.

§ 7501. Short title of chapter.

This chapter shall be known and may be cited as the Home Inspection Law.

§ 7502. Definitions and index of definitions.

(a) Definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Home inspection." A noninvasive visual examination of some combination of the mechanical, electrical or plumbing systems or the structural and essential components of a residential dwelling designed to identify material defects in those systems

and components and performed for a fee in connection with or preparation for a proposed or possible residential real estate transfer. The term also includes any consultation regarding the property that is represented to be a home inspection or that is described by any confusingly similar term. The term does not include an examination of a single system or component of a residential dwelling such as, for example, its electrical or plumbing system or its roof. The term also does not include an examination that is limited to inspection for or of one or more of the following: wood destroying insects, underground tanks and wells, septic systems, swimming pools and spas, alarm systems, air and water quality, tennis courts and playground equipment, pollutants, toxic chemicals and environmental hazards.

"Home inspection report." A written report on the results of a home inspection.

"Home inspector." An individual who performs a home inspection.

"National home inspectors association." Any national association of home inspectors that:

(1) Is operated on a not-for-profit basis and is not operated as a franchise.

(2) Has members in more than ten states.

(3) Requires that a person may not become a full member unless the person has performed or participated in more than 100 home inspections and has passed a recognized or accredited examination testing knowledge of the proper procedures for conducting a home inspection.

(4) Requires that its members comply with a code of conduct and attend continuing professional education classes as an ongoing condition of membership.

(b) Index of other definitions.--The following is a nonexclusive list of other definitions applying to this chapter and the sections in which they appear:

"Agent." Section 7102 (relating to definitions).

"Agreement of transfer." Section 7102 (relating to definitions).

"Buyer." Section 7102 (relating to definitions).

"Material defect." Section 7102 (relating to definitions).

"Residential real estate transfer." Section 7103 (relating to application of part).

"Seller." Section 7102 (relating to definitions).

§ 7503. Relationship to other laws.

(a) General rule.--Nothing in this chapter shall be construed to allow a home inspector who is not registered or licensed under one or more of the following laws to perform any activity that would constitute the practice of the profession regulated by that law:

(1) The act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law.

(2) The act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

(3) The act of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide Control Act of 1973.

(4) The act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law.

(5) The act of July 9, 1987 (P.L.238, No.43), known as the Radon Certification Act.

(6) The act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act.

(b) Exclusions.--This chapter shall not:

(1) Apply to a person registered or licensed under an act referred to in subsection (a) when acting pursuant to his registration or license.

(2) Apply to an officer or employee of a municipality or local authority when acting in his official capacity.

(3) Affect the obligations or immunities of a person licensed under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, that are imposed or provided by that act or Chapter 73 (relating to seller disclosures) when the person is acting pursuant to his license.

(4) Affect the obligations or immunities of a person certified under the Real Estate Appraisers Certification Act when the person is acting pursuant to the person's license.

Cross References. Section 7503 is referred to in sections 7309, 7513 of this title.

§ 7504. Duty of care of home inspectors.

(a) **General rule.**--It is the duty of a home inspector to conduct a home inspection with the degree of care that a reasonably prudent home inspector would exercise.

(b) **Standard.**--In ascertaining the degree of care that would be exercised by a reasonably prudent home inspector, the court shall consider the standards of practice and codes of ethics of national home inspector associations.

§ 7505. Consumer remedies.

(a) **General rule.**--The performance of a home inspection is a service that is subject to the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(b) **Prohibited acts.**--Any of the following acts engaged in by a home inspector, an employer of a home inspector or another business or person that controls or has a financial interest in the employer of a home inspector shall be deemed to be an unfair or deceptive act or practice as defined by section 2(4)(i) through (xxi) of the Unfair Trade Practices and Consumer Protection Law:

(1) Performing or offering to perform for an additional fee any repairs to a structure with respect to which the home inspector, the employer of the home inspector or such other business or person has prepared a home inspection report within the preceding 12 months, except that this paragraph shall not apply to remediation for radon or wood destroying insects.

(2) Inspecting for a fee any property in which the home inspector, the employer of the home inspector or such other business or person has any financial interest or any interest in the transfer of the property, including without limitation receipt of a commission as an agent, unless the financial interest or interest in the transfer of the property is disclosed in writing to the buyer before the home inspection is performed and the buyer signs an acknowledgment of receipt of the disclosure.

(3) Offering or delivering any commission, referral fee or kickback to the seller of the inspected property or to an agent for either or both of the seller and the buyer for the referral of any business to the home inspector, the employer of the home inspector or such other business or person.

(4) Accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is

contingent upon the conclusions in the report, preestablished or prescribed findings or the closing of the transaction.

(c) Exception.--A home warranty company that is affiliated with or retains the home inspector does not violate subsection (b) if the home warranty company performs repairs pursuant to claims made under a home warranty contract.

(d) Remedies.--In addition to any other remedies available under the Unfair Trade Practices and Consumer Protection Law or other applicable provision of law, the owner of a property on which repairs are performed in violation of subsection (b) (1) shall be entitled to a full refund of any moneys paid for those repairs, and any promissory note or other obligation to pay given to the person performing those repairs shall be void.

Cross References. Section 7505 is referred to in section 7513 of this title.

§ 7506. Required contractual provision regarding home inspections.

Except as provided in this section, a provision of an agreement of transfer regarding the right of the buyer to obtain a home inspection report and providing for the consequences, if any, shall provide that the home inspection be performed by a full member in good standing of a national home inspection association in accordance with the ethical standards and code of conduct or practice of that association, provided that a home inspection performed by a person who has not attained full membership in a national home inspection association satisfies the requirements of this section if the person is:

(1) licensed or registered as a professional engineer under the act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law;

(2) licensed or registered under the act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law; or

(3) supervised by a full member in good standing of a national home inspection association who agrees to be responsible for the home inspection report by signing the report.

(June 28, 2004, P.L.464, No.51, eff. 60 days)

§ 7507. Contracts with home inspectors.

(a) Prohibited provisions.--The following types of provisions in a contract with a home inspector for the performance of a home inspection are contrary to public policy and shall be void:

(1) a limitation on the liability of the home inspector for gross negligence or willful misconduct;

(2) a waiver or modification of any provision of this chapter.

(b) Scope of inspection.--The scope of a home inspection, the services to be performed and the systems and conditions to be inspected or excluded from inspection may be defined by a contract between the home inspector and the client.

Cross References. Section 7507 is referred to in section 7513 of this title.

§ 7508. Home inspection reports.

(a) Required contents.--A home inspection report must be in writing and shall include:

(1) A description of the scope of the inspection, including without limitation an identification of the structural elements, systems and subsystems covered by the report.

(2) A description of any material defects noted during the inspection, along with any recommendation that certain experts be retained to determine the extent of the defects and any corrective action that should be taken. A "material defect" as defined in section 7102 (relating to definitions) that poses an unreasonable risk to people on the property shall be conspicuously identified as such.

(3) The following statements, set forth conspicuously:

"A home inspection is intended to assist in evaluation of the overall condition of the dwelling. The inspection is based on observation of the visible and apparent condition of the structure and its components on the date of inspection."

"The results of this home inspection are not intended to make any representation regarding the presence or absence of latent or concealed defects that are not reasonably ascertainable in a competently performed home inspection. No warranty or guaranty is expressed or implied."

"If the person conducting your home inspection is not a licensed structural engineer or other professional whose license authorizes the rendering of an opinion as to the structural integrity of a building or its other component parts, you may be advised to seek a professional opinion as to any defects or concerns mentioned in the report."

"This home inspection report is not to be construed as an appraisal and may not be used as such for any purpose."

(b) Confidentiality.--Except as otherwise required by law, a home inspector shall not deliver a home inspection report to any person other than the client of the home inspector without the client's consent. The seller shall have the right, upon request, to receive without charge a copy of a home inspection report from the person for whom it was prepared.

(c) Repair estimates prohibited.--A home inspector shall not express either orally or in writing an estimate of the cost to repair any defect found during a home inspection, except that such an estimate may be included in a home inspection report if:

- (1) the report identifies the source of the estimate;
- (2) the estimate is stated as a range of costs; and
- (3) the report states that the parties should consider obtaining an estimate from a contractor who performs the type of repair involved.

Cross References. Section 7508 is referred to in sections 7511, 7513 of this title.

§ 7509. Liability insurance.

(a) Required insurance.--A home inspector shall maintain insurance against errors and omissions in the performance of a home inspection and general liability, with coverages of not less than \$100,000 per occurrence and \$500,000 in the aggregate and with deductibles of not more than \$2,500.

(b) Term.--

(1) Except as set forth in paragraph (2), a home inspector shall maintain insurance under subsection (a) for at least one year after the latest home inspection report the home inspector delivers.

(2) Paragraph (1) shall not apply to a home inspection report that was delivered prior to the effective date of this section.

Cross References. Section 7509 is referred to in sections 7511, 7513 of this title.

§ 7510. Reliance by buyer.

A buyer shall be entitled to rely in good faith, without independent investigation, on a written representation by a home inspector that the home inspector is:

(1) licensed or registered as a professional engineer under the act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law;

(2) licensed or registered under the act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law; or

(3) a full member in good standing of a national home inspection association.

(June 28, 2004, P.L.464, No.51, eff. 60 days)

Cross References. Section 7510 is referred to in section 7511 of this title.

§ 7511. Penalties.

(a) **Criminal penalty.**--A person who violates section 7509 (relating to liability insurance) or who provides a false representation under section 7510 (relating to reliance by buyer) commits a summary offense and, upon conviction thereof for a first offense, shall be sentenced to pay a fine not exceeding \$500 or to imprisonment for not more than three months, or both, and for a second or subsequent offense commits a misdemeanor of the third degree and, upon conviction thereof, shall be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.

(b) **Fine.**--A person who violates any provision of section 7508 (relating to home inspection reports) shall, upon conviction in a summary proceeding before a magisterial district judge, be sentenced to pay a fine not exceeding \$500.
(Nov. 30, 2004, P.L.1618, No.207, eff. 60 days)

2004 Amendment. Act 207 amended subsec. (b). See section 29 of Act 207 in the appendix to this title for special provisions relating to construction of law.

§ 7512. Statute of limitations.

An action to recover damages arising from a home inspection report must be commenced within one year after the date the report is delivered.

§ 7513. Engineers and architects.

Notwithstanding section 7503(b)(1) (relating to relationship to other laws), the following sections: 7505 (relating to consumer remedies), 7507(a)(1) and (b) (relating to contracts with home inspectors), 7508 (relating to home inspection reports) and 7509 (relating to liability insurance) shall apply to a person licensed or registered as a professional engineer under the act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law, or a person licensed or registered under the act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law, when performing a home inspection.

(June 28, 2004, P.L.464, No.51, eff. 60 days)

2004 Amendment. Act 51 added section 7513.

PRIVATE TRANSFER FEE OBLIGATIONS

Sec.

- 8101. Short title of chapter.
- 8102. Intent.
- 8103. Definitions.
- 8104. Prohibition.
- 8105. Liability for violation.
- 8106. Disclosure.
- 8107. Notice requirements for existing private transfer fee obligations.

Enactment. Chapter 81 was added June 24, 2011, P.L.40, No.8, effective immediately.

§ 8101. Short title of chapter.

This chapter shall be known and may be cited as the Private Transfer Fee Obligation Act.

§ 8102. Intent.

The General Assembly finds and declares that the public policy of this Commonwealth favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The General Assembly further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee or the method by which any private transfer fee is created or imposed. Thus, the General Assembly finds and declares that a private transfer fee obligation shall not run with the title to property or otherwise bind subsequent owners of property under any common law or equitable principle.

§ 8103. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Financial institution." A bank, savings association or operating subsidiary of a bank or savings association, a credit union, an association authorized by law to engage in the mortgage loan business or an assignee of a mortgage, mortgage note or other rights of a financial institution.

"Payee." A person that claims the right to receive or collect a private transfer fee payable under a private transfer obligation.

"Private transfer fee." A fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept the transfer, if the obligation to pay the fee or charge runs with title to the property or otherwise binds subsequent owners of property, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price or other consideration given for the transfer. The following are not private transfer fees for purposes of this chapter:

- (1) Any consideration payable by or on behalf of the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by or on behalf of the grantee based upon any subsequent appreciation, development or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind successors in

title to the property. For the purposes of this paragraph, an interest in real property may include a separate mineral estate and its appurtenant surface access rights.

(2) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including, but not limited to, any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development or sale of the property.

(3) Any interest, charge, fee or other amount payable to a lender or financial institution pursuant to a mortgage, deed of trust, lien or security interest in or against real property, including, but not limited to, any fee payable for consenting to an assumption of a loan or a transfer of the real property subject to the mortgage, deed of trust, lien or security interest or any fee or charge payable for estoppel letters or certificates and any shared appreciation interest or profit participation or other consideration payable to the lender or financial institution.

(4) Any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor under a lease, including, but not limited to, any fee payable to the lessor for consenting to an assignment, subletting, encumbrance or transfer of the lease.

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing or not exercising the option or right upon the transfer of the real property to another person.

(6) Any tax, fee, charge, assessment, fine or other amount payable to or imposed by a governmental authority.

(7) Any fee, charge, assessment, dues, fine, contribution or other amount payable to a homeowners', condominium, cooperative, manufactured home or property owners' association and its agent pursuant to a declaration or covenant or law applicable to the association, including, but not limited to, fees or charges payable for estoppel letters or certificates, including resale certificates, issued by the association or its authorized agent.

(8) Any fee, charge, assessment, dues, fine, contribution or other amount, which is imposed by a declaration or covenant encumbering real property and which is payable solely to a nonprofit corporation, charitable association or charitable trust, that:

(i) has been in existence for at least two years;
and

(ii) holds, on real property subject to the declaration or covenant or on real property included in the same development plan with the real property subject to the declaration or covenant:

(A) an agricultural conservation easement as defined in section 3 of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law; or

(B) a conservation easement as defined in section 3 of the act of June 22, 2001 (P.L.390, No.29), known as the Conservation and Preservation Easements Act.

(9) Any fee, charge, assessment, dues, fine, contribution or other amount pertaining solely to the

purchase or transfer of a club membership relating to real property owned by the member, including, but not limited to, any amount determined by reference to the value, purchase price or other consideration given for the transfer of the real property.

(10) Any payment or other amount due for or upon the removal or extraction of timber, crops or minerals, including oil, gas and water, from real property.

"Private transfer fee obligation." An obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether recorded, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

"Transfer." The sale, gift, conveyance, assignment, inheritance or other transfer of an ownership interest in real property located in this Commonwealth.

§ 8104. Prohibition.

A private transfer fee obligation recorded or entered into in this Commonwealth on or after the effective date of this chapter does not run with the title to real property and is not binding on or enforceable at law or in equity against a subsequent owner, purchaser or mortgagee of an interest in real property as an equitable servitude or otherwise. A private transfer fee obligation recorded or entered into in this Commonwealth before the effective date of this chapter is presumed valid and enforceable, provided that it complies with the provisions of sections 8106 (relating to disclosure) and 8107 (relating to notice requirements for existing private transfer fee obligations) and all other applicable law.

§ 8105. Liability for violation.

A person who records or enters into an agreement imposing a private transfer fee obligation in his favor after the effective date of this chapter may be liable for the following:

(1) the damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property, including, but not limited to, the amount of any transfer fee paid by a party to the transfer; and

(2) the attorney fees, expenses and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title.

Where an agent acts on behalf of a disclosed principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal, rather than the agent.

§ 8106. Disclosure.

(a) General rule.--A contract for the sale of real property subject to a private transfer fee obligation shall include a provision disclosing the existence of that obligation, a description of the obligation and a statement that private transfer fee obligations are subject to certain restrictions under this chapter. A contract for the sale of real property that does not conform to the requirements of this section shall not be enforceable by the seller against the buyer, nor shall the buyer be liable to the seller for damages under the contract. For purposes of this section, "buyer" shall include all subsequent buyers and "seller" shall include payees. The buyer under a contract that fails to comply with this section shall be entitled to the return of all deposits made in connection with the sale of the real property.

(b) Recovery upon failure to disclose.--Where a private transfer fee obligation is not disclosed under subsection (a) and a buyer subsequently discovers the existence of the private transfer fee obligation after title to the property has passed to the buyer, the buyer may be awarded:

(1) the damages resulting from the failure to disclose the private transfer fee obligation, including, but not limited to, the amount of any private transfer fee paid by the buyer, or the difference between:

(i) the market value of the real property if it were not subject to a private transfer fee obligation; and

(ii) the market value of the real property as subject to a private transfer fee obligation; and

(2) the attorney fees, expenses and costs incurred by the buyer in seeking the buyer's remedies under this subsection.

(c) Waiver.--A provision in a contract for sale of real property that purports to waive the rights of a buyer under this section shall be void.

Cross References. Section 8106 is referred to in section 8104 of this title.

§ 8107. Notice requirements for existing private transfer fee obligations.

(a) Notice of private transfer fee obligation.--The holder of a private transfer fee obligation imposed prior to the effective date of this chapter shall record, within six months after the effective date of this chapter, against the real property subject to the private transfer fee obligation, a separate document in the office of the recorder of deeds for each county in which the real property is located that complies with all of the following requirements:

(1) The title of the document shall be "Notice of Private Transfer Fee Obligation" in at least 14-point boldface type.

(2) The amount, if the private transfer fee is a flat amount, or the percentage of the sales price constituting the cost of the private transfer fee, or other basis by which the private transfer fee is to be calculated.

(3) If the real property is residential property, actual dollar cost examples of the private transfer fee for a home priced at \$250,000, \$500,000 and \$750,000.

(4) The date or circumstances under which the private transfer fee obligation expires, if any.

(5) The purpose for which the funds from the private transfer fee obligation will be used.

(6) The name of the payee and specific contact information regarding where the funds are to be sent.

(7) The acknowledged signature of the holder, or a representative of the holder.

(8) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(9) Where there is more than one person or entity who claims the right to receive or collect a private transfer fee under a private transfer fee obligation, those persons or entities shall designate a single person or entity as the payee for purposes of that private transfer fee obligation.

(b) Amendment.--The payee may file an amendment to the notice of private transfer fee containing new contact information, but the amendment must contain the recording information of the notice of private transfer fee which it

amends and the legal description of the real property burdened by the private transfer fee obligation.

(c) Failure to file notice.--If a payee fails to file the notice required under subsection (a), the grantor of real property burdened by the private transfer fee obligation may proceed with the conveyance of any interest in the real property to any grantee and in so doing shall be conclusively deemed to have acted in good faith and shall not be subject to any obligations under the private transfer fee obligation. In such event, the private transfer fee obligation shall become null and void, and the real property shall be conveyed free and clear of the private transfer fee and private transfer fee obligation.

(d) Defective notice.--If a payee records a materially defective or misleading notice under subsection (a), then a grantor, on recording of an affidavit under subsection (f), may convey an interest in the real property to a grantee without payment of the private transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event, the private transfer fee obligation shall become null and void, and the real property shall be conveyed free and clear of the private transfer fee and private transfer fee obligation.

(e) Failure to provide statement of private transfer fee.--Should a payee fail to provide a written statement of the private transfer fee payable within 30 days of the date of a written request for the same sent to the address shown in the notice of private transfer fee, then a grantor, on recording of an affidavit under subsection (f), may convey an interest in the real property to a grantee without payment of the private transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event, the private transfer fee obligation shall become null and void, and the real property shall be conveyed free and clear of the private transfer fee and private transfer fee obligation.

(f) Affidavit.--An affidavit stating the facts enumerated in subsection (g)(1) or (2) shall be recorded in the office of the recorder of deeds for each county in which the real property is situated prior to or simultaneously with a conveyance pursuant to subsection (c), (d) or (e) of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection shall state that the affiant has actual knowledge of and is competent to testify to the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the person appearing by the record to be the owner of the real property at the time of the signing of the affidavit, a reference by recording information to the instrument of record containing the private transfer fee obligation and an acknowledgment that the affiant is testifying under penalty of perjury.

(g) Effect of affidavit.--An affidavit filed under subsection (f) shall constitute prima facie evidence that either:

(1) the payee has failed to comply with subsection (a) in the respects stated in the affidavit; or

(2) a request for the written statement of the private transfer fee was sent to the payee at the address shown on the notice of private transfer fee and the payee failed to provide the written statement of the private transfer fee payable within 30 days of the date of the notice sent to the address shown in the notification.

Cross References. Section 8107 is referred to in section 8104 of this title.

CHAPTER 82

BROADBAND SERVICES

Sec.

8201. Definitions.

8202. Broadband services.

Enactment. Chapter 82 was added October 29, 2020, P.L.1034, No.98, effective in 60 days.

§ 8201. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affiliate." A person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person. The term includes subsidiaries, partnerships, joint ventures and other entities that have shared resources, interests or business dealings.

"Broadband facilities." Wires, cables, materials, equipment and other facilities, which are or can be used for the provision of broadband services.

"Broadband service supplier." An electricity, telecommunications, cable operator or Internet supplier or affiliate that constructs, owns or installs new broadband facilities to provide broadband services, at wholesale or retail, using existing electric infrastructure, including, but not limited to, poles and conduit, within an easement. The term includes third parties with which the electric cooperative corporation contracts, licenses or otherwise enters into agreements with for the installation, service or maintenance of broadband infrastructure and provision of broadband services on behalf of the electric cooperative corporation or its affiliate.

"Broadband services." As follows:

(1) Service that consists of or includes the provision of broadband that:

(i) is used to provide access to the Internet; or

(ii) provides computer processing, information storage, information content or protocol conversion.

(2) The term includes the provision of voice over Internet protocol services and Internet protocol-enabled services.

"Easement." A recorded or unrecorded right-of-way, easement or similar property right acquired by eminent domain, prescription or conveyance that is used or may be used for transmitting, distributing or providing electric service by utilizing electric infrastructure.

"Electric cooperative corporation." As defined in 15 Pa.C.S. § 7302(a) (relating to application of chapter).

§ 8202. Broadband services.

(a) Broadband facilities.--The following apply:

(1) An electric cooperative corporation or an affiliate of an electric cooperative corporation may provide broadband services or construct, operate and maintain broadband facilities through an existing easement owned, held or used by the electric cooperative corporation. An electric cooperative corporation may only supply retail broadband services through one or more affiliates.

(2) Except as provided for under subsection (b), the attachment of broadband facilities shall not constitute a change to the physical use of the easement, interfere with or impair any vested rights of the property owner subject to the easement or place an additional burden on the property or interests of the owner.

(3) A broadband service supplier that is not an electric cooperative corporation may access and attach broadband facilities within an electric cooperative corporation's easement:

(i) if an electric cooperative corporation or its affiliates have attached broadband facilities to provide retail or wholesale broadband services or if an electric cooperative corporation, in its sole discretion, gives express written permission to a broadband service supplier to utilize an existing electric easement; and

(ii) subject to the terms of applicable safety standards, the structural integrity of the electric infrastructure and the electric cooperative corporation's rules and fees for the attachments.

(4) An electric cooperative corporation that elects to provide retail broadband services, through an affiliate, as a broadband service supplier shall permit other suppliers of such services nondiscriminatory access to attach to electric infrastructure, owned or controlled by the electric cooperative corporation, pursuant to the rates, terms and conditions comparable to and no less favorable than those offered to an affiliate of an electric cooperative corporation engaged in the provision of retail broadband services. Nothing in this paragraph shall limit, amend, supersede or otherwise alter the rates, terms and conditions established under existing written attachment agreements for the term of such agreements except as provided under subparagraph (iii). The following shall apply:

(i) Except as provided under subparagraph (ii), an electric cooperative corporation shall provide written notice, by first class mail, to any broadband service supplier with which it has an existing written agreement governing the broadband service supplier's attachments to electric infrastructure owned or controlled by the electric cooperative corporation within 90 days of the date on which an electric cooperative corporation's affiliate begins offering retail broadband services over broadband facilities.

(ii) An electric cooperative corporation that is providing retail broadband service through an affiliate as of the effective date of this section shall not be required to send the notice required under subparagraph (i).

(iii) For a period of five years from receipt of the notice required under subparagraph (i), or from the effective date of this section if subparagraph (ii) applies, a broadband service supplier that has an existing written attachment agreement with an electric cooperative corporation shall have the right to attach to the poles of that electric cooperative corporation at rates that shall not exceed the then-effective rates in the existing agreement, subject to permissible periodic rate adjustments provided in the existing agreement.

(5) An electric cooperative corporation may not do any of the following:

(i) require a person to purchase broadband services from an affiliate of the electric cooperative corporation as a condition of receiving or continuing to receive electric energy from the electric cooperative corporation; or

(ii) disconnect, or threaten to disconnect, electric service to a customer due to the customer's failure to pay for broadband services provided to the customer by the electric cooperative corporation or an affiliate.

(b) Applicability.--Except for the replacement or relocation of existing poles or as otherwise provided by law, subsection (a) (2) shall not apply to the attachment of broadband facilities that are additional freestanding or ground-based structures within the easement.

(c) Cross-subsidization.--The following shall apply:

(1) An electric cooperative corporation that supplies retail broadband services through an affiliate shall ensure that the rates charged for the provision of electric service do not include any of its affiliate's retail broadband service costs and shall not use its electric service revenues to subsidize the provision of retail broadband services to the public by an affiliate.

(2) An electric cooperative corporation may make capital investments in an affiliate, make loans for the benefit of an affiliate, enter into capital or operating leases with an affiliate and enter into guarantees or other security arrangements for the benefit of an affiliate, all of which may be in amounts, on terms and subject to conditions as the electric cooperative corporation's board of directors approves and determines to be prudent or appropriate.

(d) Construction.--Except as otherwise provided under this chapter, nothing in this chapter shall limit any of the rights that exist under the laws of this Commonwealth of any broadband service supplier to secure its own easements for the construction or installation of broadband facilities or the provision of broadband services or to negotiate separate terms or agreements for attachments to electric infrastructure, owned or controlled by an electric cooperative corporation.

APPENDIX TO TITLE 68

REAL AND PERSONAL PROPERTY

Supplementary Provisions of Amendatory Statutes

1992, DECEMBER 18, P.L.1279, NO.168

§ 8. Applicability.

(a) In general.--Except as set forth in this section, the amendments to 68 Pa.C.S. made by this act shall apply only with respect to events and circumstances occurring after the effective date of this act. The changes to 68 Pa.C.S. made by this act neither invalidate otherwise valid provisions of the declaration, code of regulations, bylaws, declaration plan or plats and plans of any condominium created prior to the effective date of this act nor invalidate otherwise proper actions of any declarant, condominium association, council or executive board taken prior to the effective date of this act.

(b) Control of condominiums.--The amendment of 68 Pa.C.S. §§ 3208(b) and (c), 3215(c), 3217(c) and 3306(a)(6) shall apply only to condominiums created after the effective date of this act.

(c) Termination agreements or ratifications.--The amendment of 68 Pa.C.S. § 3220 shall apply only with regard to a termination agreement or ratifications thereof not executed by any unit owner prior to the effective date of this act.

(d) Notices of meetings.--The amendment of 68 Pa.C.S. § 3308 shall apply only with regard to notices of meetings given after the effective date of this act.

(e) Claims for tort or breach of contract.--The amendment of 68 Pa.C.S. § 3311(a)(3) shall apply only with regard to a claim for a tort or breach of contract for which litigation shall have been initially instituted after the effective date of this act.

(f) Fiscal years.--The amendment of 68 Pa.C.S. §§ 3313 and 3314 shall apply only with regard to fiscal years of the association commencing after the effective date of this act.

(g) Public offering statements.--The amendment of 68 Pa.C.S. §§ 3402(a) and 3404 shall apply only with regard to a public offering statement not delivered to any purchaser prior to the effective date of this act.

(h) Conveyances of conversion buildings.--The amendment of 68 Pa.C.S. § 3411(c) shall not apply to a conversion building in a condominium with regard to which there has been a conveyance or binding agreement to sell any unit in the conversion building to a bona fide purchaser prior to the effective date of this act.

Explanatory Note. Act 168 amended or added sections 3102, 3103, 3201, 3205, 3208, 3210, 3211, 3215, 3217, 3218, 3219, 3220, 3222, 3223, 3301, 3302, 3303, 3304, 3306, 3308, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3318, 3319, 3320, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411 and 3414.

2004, NOVEMBER 30, P.L.1618, NO.207

§ 29. Construction of law.

Nothing in this act shall be construed or deemed to provide magisterial district judges with retirement benefits or rights that are different from those available to district justices or justices of the peace immediately prior to the effective date of this act. Nothing in this act shall be construed or deemed to provide senior magisterial district judges with retirement benefits or rights that are different from those available to senior district justices immediately prior to the effective date of this act.

Explanatory Note. Act 207 amended section 7511 of Title 68.

2013, JULY 2, P.L.204, NO.37

§ 2. Applicability.

This act shall apply as follows:

(1) The amendment of 68 Pa.C.S. §§ 3205(12) and (13)(ii), 3206(2), 5205(13) and (14)(ii) and 5206(2) shall apply to all condominiums and planned communities,

respectively, created by declarations recorded less than seven years prior to the effective date of this act.

(2) The amendment of the following provisions shall not affect any other provision of Title 68:

- (i) 68 Pa.C.S. § 3205(12) and (13)(ii).
- (ii) 68 Pa.C.S. § 3206(2).
- (iii) 68 Pa.C.S. § 3219(a).
- (iv) 68 Pa.C.S. § 5205(13) and (14)(ii).
- (v) 68 Pa.C.S. § 5206(2).
- (vi) 68 Pa.C.S. § 5219(a)(3).

Explanatory Note. Act 37 amended sections 3205, 3206, 3219, 3414, 5205, 5206 and 5219 of Title 68.

2015, JUNE 19, P.L.23, NO.6

§ 3. Revisions to property disclosure statement.

For the purpose of implementing the amendment or addition of 68 Pa.C.S. § 7304(b)(13) and (17), revisions to the property disclosure statement shall be promulgated by the State Real Estate Commission within 120 days of the effective date of this section as a final-omitted regulation under the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, with notice of proposed rulemaking omitted under section 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

Explanatory Note. Act 6 amended sections 7102 and 7304 of Title 68.